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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN, TWELFTH REGION WAGE STABILIZATION BOARD, ET AL., APPELLANTS,

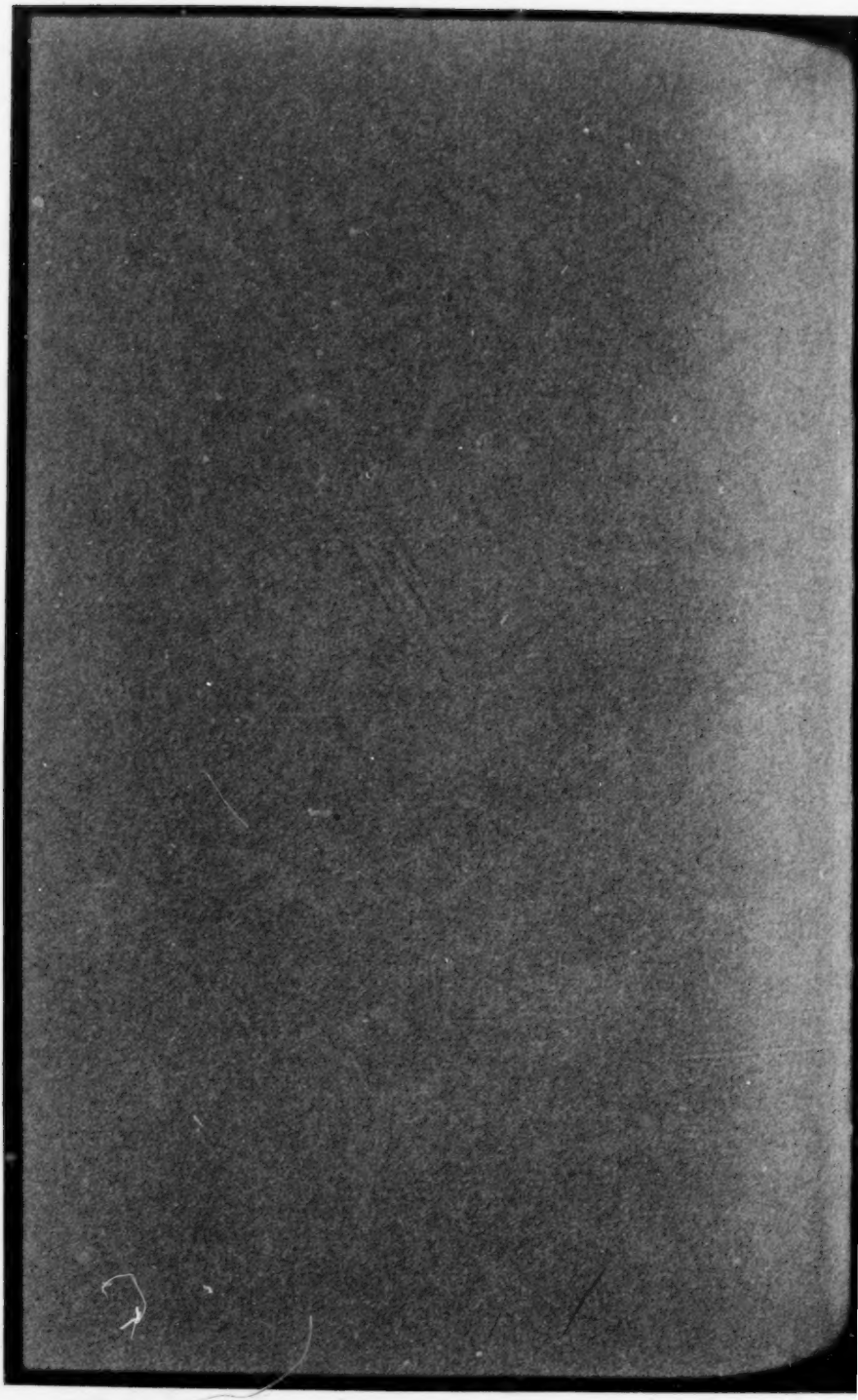
vs.

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED NOVEMBER 2, 1953

Probable jurisdiction noted January 4, 1954



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1 [File endorsement omitted]

In United States District Court, Northern District of California, Southern Division

No. 32541

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, PLAINTIFF

vs.

ARTHUR P. ALLEN, CHAIRMAN TWELFTH REGION WAGE STABILIZATION BOARD; RUDOLPH F. HERNREID, MEMBER TWELFTH REGION WAGE STABILIZATION BOARD; ERNEST A. NORBACH, TWELFTH REGION COUNSEL; JOSEPH I. NACHMAN, CHIEF OF RULINGS AND OPINIONS BRANCH TWELFTH REGION WAGE STABILIZATION BOARD; JEROME SMITH, CHIEF ENFORCEMENT ATTORNEY, TWELFTH REGION WAGE STABILIZATION BOARD; CHARLES C. KILLINGSWORTH, CHAIRMAN WAGE STABILIZATION COMMITTEE; H. L. ENARSON, HERMAN LAZARUS AND MEYER S. RYDER, MEMBERS OF WAGE STABILIZATION COMMITTEE; PHIL C. NEAL, ENFORCEMENT COMMISSIONER; CHARLES O. GREGORY, CHAIRMAN NATIONAL ENFORCEMENT COMMISSION; HELEN F. HUMPHREY, RALPH F. FUCHS AND LAWSON F. BERNSTEIN, MEMBERS OF NATIONAL ENFORCEMENT COMMISSION; ISAAC GRONER, CHIEF COUNSEL FOR WAGE STABILIZATION COMMITTEE; DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE AND DOE SIX, DEFENDANTS

COMPLAINT FOR PRELIMINARY AND PERPETUAL INJUNCTION—Filed February 13, 1953

Plaintiff, Grand Central Aircraft Co., a California corporation, doing business at 1310 Airway, Glendale, California, brings this, its complaint, against the above named defendants and each of them, and complains and alleges as follows:

2 I

This action arises under the Constitution of the United States, Article 1, Sections 1 and 9; the 5th, 6th, 7th, 8th and 16th amendments to the Constitution of the United States; and the Defense Production Act of 1950, 64 Stat. 798, as amended, 66 Stat. 296, U.S.C. Title 50 App., Sections 2061, et seq.; as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

II

Plaintiff is a corporation incorporated under the laws of California, with its principal office and place of business in the City of Glendale, California, and a branch plant at Tucson, Arizona. Its plants at Tucson and Glendale have been and are now engaged in the production, modification, and overhaul of aircraft equipment under contracts entered into prior to the enactment of the Defense Production Act of 1950.

III

Pursuant to the provisions of the Defense Production Act of 1950, as amended, on or about September 9, 1950, an Economic Stabilization Agency was established by executive order for the purpose of administering wage and price controls. Section 402(b) of the Defense Production Act of 1950, as amended, creates a Wage Stabilization Board within the Economic Stabilization Agency, said Board to be composed, in equal numbers, of members representative of industry, labor, and the general public, appointed by the President with the advice and consent of the Senate. Said members were appointed by the President on or about July 31, 1952. Regional Wage Stabilization Boards were thereafter established by regulation in order to assist the National Board in its functions. On or about December 6, 1952, the industry members of said National and Regional Boards resigned. On December 15, 1952, the Economic Stabilization Administrator purported to establish a Wage Stabilization Committee composed of the duly appointed public
3 members of the said National Board, which Committee was directed to carry out the statutory functions of the National Wage Stabilization Board. Pursuant to the order of said Committee, only the public members of said Regional Boards have continued to serve on said regional Boards.

IV

Defendant Arthur P. Allen is chairman of the Wage Stabilization Board for the Twelfth Region, and defendant Rudolph F. Hernried is the only other present member thereof. Defendant Ernest A. Norbach is Regional Counsel thereof. Defendant Joseph I. Nachman is Chief of the Rulings and Opinions Branch thereof. Defendant Jerome Smith is Chief Enforcement Attorney thereof. Defendant Charles C. Killingsworth is chairman of the National Wage Stabilization Committee, and Defendants H. L. Enarson, Herman Lazarus, and Meyer S. Ryder are the present members of said committee. Defendant Isaac Groner is Chief Counsel for said committee.

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V

On or about July 30, 1952, General Order No. 18 was issued by the Economic Stabilization Administrator, establishing a National Enforcement Commission. Said Commission was given the purported power by said order to determine the amount of wages paid in violation of regulations promulgated pursuant to the Defense Production Act, as amended, and to certify such determination to other governmental agencies so that the amount of such wage shall be disallowed for the purposes of determining costs or expenses under other laws or regulations. On August 21, 1952, General Procedural Regulation 1, Revised, was issued by the Economic Stabilization Agency, establishing the procedures to be followed in disallowance proceedings before the National Enforcement Commission.

4

VI

Defendant Charles O. Gregory is Chairman of said National Enforcement Commission, and Defendants Helen F. Humphrey, Ralph F. Fuchs, and Lawson F. Bernstein are the present members of said Commission.

VII

The true names of Defendants Doe One, Doe Two, Doe Three, Doe Four, Doe Five and Doe Six are unknown to plaintiff and for that reason they are sued herein under fictitious names, and plaintiff prays that when the true names of said defendants are ascertained they may be inserted herein by amendment of this complaint and that this action may then proceed against them under their true names.

VIII

On January 26, 1951, General Wage Stabilization Regulation 1 was issued by the Economic Stabilization Administrator. Said regulation prohibited any wage increases.

IX

On November 4, 1952, a complaint against this plaintiff was issued by the Wage Stabilization Board and was filed with the National Enforcement Commission. A copy of said complaint is attached hereto. Said complaint alleged that plaintiff granted wage increases to employees in its productive and non-productive units at its Glendale and Tucson plants during the period from January 26, 1951, to January 1, 1952, and that such increases violated General Wage Stabilization Regulation 1. On November 21, 1952, plaintiff filed with the National Enforcement Commission a motion for a more definite statement of the allegations in said complaint or for a bill of particulars. Said motion was denied on December 15, 1952,

except the following language was ordered added to Paragraph 2 of the said complaint:

5 "The wage increases referred to are only those denominated upon respondent's records as having been granted for 'merit' to the employees in the productive and non-productive units (which respondent calls 'direct' and 'indirect') at both its Glendale and Tucson plants, between January 26 and December 31, 1951. Said increases required the prior approval of the Wage Stabilization Board, which prior approval was not obtained."

X

On January 14, 1953, defendant Neal was appointed by the National Enforcement Commission to hear the allegations of said complaint and to recommend a determination of the same to the Commission. On January 28, 1953, plaintiff moved said defendant to dismiss the said complaint upon the grounds set forth in paragraphs XIII and XIV below. This motion was denied by defendant Neal on or about February 11, 1953, upon the ground that he was without power to rule on the constitutionality of the Defense Production Act or on the validity of the regulations promulgated thereunder. A hearing on the allegations of the said complaint before defendant Neal has been set for February 24, 1953, at Los Angeles, California, notice of which was received by plaintiff on February 11, 1953.

XI

The Wage Stabilization Committee, through its members, attorneys and agents, namely, defendants Killingsworth, Enarson, Lazarus, Ryder, Groner, Allen, Hernried, Smith, Norbach and Nachman, threatens to prosecute the said complaint before the National Enforcement Commission.

XII

The National Enforcement Commission, through its members, attorneys, and agents, namely, defendants Humphrey, Fuchs,
6 Bernstein and Neal, threatens to conduct a hearing on the allegations of said complaint and to render decision thereafter.

XIII

The regulations, orders, and other documents under authority of which defendants are threatening to hold or prosecute said hearing are null and void, and any action taken by defendants in holding or prosecuting such hearing or in rendering decision upon the alle-

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gations of the said complaint will be without authority of law and of no force whatsoever in the following particulars:

(a) General Wage Stabilization 1 purported to impose a ceiling on wages and is therefore in conflict with the Defense Production Act, which authorized only the stabilization of wages;

(b) By the above referred to General Order 18, the National Enforcement Commission is directed to follow General Order 15 of the Economic Stabilization Agency in determining the amount of wage paid in violation of regulation, which should be certified to other government agencies. Said General Order 15 is void in that it directs the disallowance of the entire amount of such wage in the absence of mitigating circumstances, and is therefore in conflict with Section 402(b) of the Defense Production Act, which section authorizes disallowance only of that part of the wage paid which exceeds the amount payable without violation of regulation;

(c) Said General Order No. 15 and General Procedural Regulation 1, Revised, were not accompanied by any statement that their promulgation was preceded by consultation with industry representatives and that consideration was given to the
7 recommendations of said representatives, or that circumstances rendered such consultation impossible. Said regulations are therefore in conflict with Section 709 of the said Act, which requires that such a statement accompany any rule, regulation or order or amendment thereto, promulgated under authority of the said Act.

(d) The Wage Stabilization Committee and the Twelfth Regional Wage Stabilization Board, which are prosecuting the said complaint, are composed only of the persons previously appointed as public members of the National and Regional Wage Stabilization Boards, respectively, in conflict with Section 403(b)(1) of the Defense Production Act which directs that the Board administering wage controls shall be composed of representatives of industry, labor, and the public;

(e) The said Wage Stabilization Committee is prosecuting the said complaint under the authority and control of the Economic Stabilization Administrator and not under the authority or control of the Attorney General, in conflict with Section 706(b) of the Defense Production Act, which requires that all litigation arising under said Act be under the supervision and control of the Attorney General;

(f) The said complaint is vague, ambiguous, and uncertain and is in conflict with General Procedural Regulation 1, Revised, which requires that complaints filed before the National

Enforcement Commission set forth a concise statement of the facts alleged to constitute the contravention of the Defense Production Act or regulations issued thereunder;

(g) A hearing conducted upon the allegations of said
8 complaint will deny plaintiff due process of law in that the complaint is so vague and general that plaintiff is not adequately apprised of the charges brought against it.

XIV

The Defense Production Act of 1950, as amended, is unconstitutional as applied to plaintiff in the following particulars:

(a) Said Act makes no express provision for judicial review of wage regulations issued thereunder, and no such review was intended to be provided by Congress. Disallowance of plaintiff's wage costs pursuant to Section 405(b) thereof will deprive plaintiff of due process of law under the 5th Amendment to the Constitution of the United States, in that plaintiff will be unable to attack the validity of General Wage Stabilization Regulation 1, or any other applicable regulations before any agency or any court;

(b) Said Act makes no express provision for judicial review of certifications of disallowance issued under the authority of Section 405(b) thereof, and no such review was intended to be provided by Congress. Action by the National Enforcement Commission on the matters alleged in the said complaint now before it will deprive plaintiff of due process of law under the 5th Amendment to the Constitution of the United States, in that plaintiff will be unable to attack the validity of such action before any court;

(c) Section 405(b) of said Act fails to make provision for plaintiff's right to a jury trial, although that right is
9 guaranteed to plaintiff by the 7th Amendment to the Constitution of the United States;

(d) Section 405(b) of said Act authorizes imposition of a tax on plaintiff's gross receipts although said tax is not apportioned as required by Article 1, Section 9, of the Constitution of the United States, and although said tax is not a tax permitted by the 16th Amendment to the Constitution of the United States.

(e) Section 405(b) of said Act as applied to plaintiff will impair the obligation of plaintiff's contracts and thereby deprive plaintiff of due process of law;

(f) Section 405(b) of said Act imposes an excessive fine in violation of the 8th Amendment to the Constitution of the United States;

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(g) Title 4 of said Act is unconstitutional in authorizing stabilization of wages paid by plaintiff, for the reason that there is no congressional power to stabilize plaintiff's wages in the absence of a declaration of war.

(h) Title 4 of said Act purports to delegate legislative power to the President without imposition of any sufficient standard to guide the exercise of said power, and is therefore in conflict with Article 1, Section 1, of the Constitution of the United States;

(i) Section 403(b) of said Act denies plaintiff due process of law in that it establishes a board composed of representatives of private groups who have a pecuniary interest in the regulations which they are appointed to promulgate and administer, and who are therefore unable to promulgate or administer said regulations in a fair and impartial manner.

10

XV

Plaintiff denies in good faith that it has violated the Defense Production Act of 1950, as amended, or any regulation or order issued pursuant thereto. Prosecution of the complaint issued by the Wage Stabilization Board and now filed with the National Enforcement Commission will cause irreparable damage to plaintiff in that:

(a) Plaintiff will be threatened for an extended period of time with the retroactive disallowance by one or more government agencies of the entire amount of wages paid to its employees during the period of almost a year which is brought into question by said complaint. Said contingent liability will prevent plaintiff from entering into contracts and conducting and expanding its business in normal fashion until said liability is determined;

(b) Plaintiff's employees and officers will be required to spend large amounts of time, at great cost to plaintiff, in gathering and presenting data and acting as witnesses for the purposes of plaintiff's defense. Plaintiff will also be required to retain counsel, at further cost to plaintiff. All of said expenses incident to the conduct of the void proceeding before the National Enforcement Commission will be irrecoverably lost to plaintiff;

(c) Any order issued by the said Commission in certifying disallowance of plaintiff's costs to one or more government agencies will require said agencies to make the said disallowance at great cost to plaintiff, although plaintiff will be unable to attack such action before said agencies or before any court.

11

WHEREFORE, plaintiff prays that the above entitled Court grant the following relief:

(1) Issue a preliminary injunction against the defendants and each of them, and their agents, servants, attorneys, successors in office, and all persons in active concert or participation with them, pending the final determination of this action and until further order of this court restraining them from prosecuting, hearing any charges brought against, or otherwise proceeding against plaintiff, with respect to any alleged violations of the Defense Production Act of 1950 as originally enacted and as amended, or of any regulations or orders issued pursuant thereto;

(2) Issue an injunction after the hearing of the cause permanently enjoining the defendants, and each of them, or their successors in office, from so prosecuting, hearing charges, or otherwise proceeding against the plaintiff; and

(3) Grant such other relief as shall be found necessary or appropriate in the premises.

Dated: February 12th, 1953.

LATHAM & WATKINS,
By R. W. LUND,
Attorneys for Plaintiff Grand Central Aircraft Co.

12 United States of America

Before the National Enforcement Commission, Economic Stabilization Agency

Case No. 12-122

In the Matter of GRAND CENTRAL AIRCRAFT COMPANY, P. O. Box 3157, Grand Central Station, Glendale, California

COMPLAINT

Section 405(b) of Title IV of the Defense Production Act of 1950, as amended (64 Stat. 803; U. S. Code, Title 50, App., Supp. Section 2101 et seq.), hereinafter referred to as the "Act", provides that no employer shall pay wages, salaries or other compensation in contravention of any regulation or order issued thereunder by *the* Wage Stabilization Board.

It appearing to the Wage Stabilization Board that Grand Central Aircraft Company, hereinafter referred to as the "Employer", has contravened the Act and the Regulations and Orders issued thereunder, and that an enforcement proceeding should be commenced before the National Enforcement Commission, Economic Stabiliza-

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tion Agency, the Wage Stabilization Board, Region XII, issues this complaint pursuant to the National Enforcement Commission General Procedural Regulation No. 1, Revised, Economic Stabilization Agency, a copy of which is hereto attached.

The employer has the right to submit a written answer to the allegations of the complaint set forth below with the National Enforcement Commission, Economic Stabilization Agency, Washington 25, D. C., within fifteen days after receipt of this complaint, serving a copy by registered mail upon Ernest H. Norback, Regional Counsel, Region XII, Wage Stabilization Board, 1254 Flood
13 Building, 870 Market Street, San Francisco, California. Any allegation in this complaint not specifically denied by answer will be deemed to have been admitted.

The employer has the right to a hearing before the National Enforcement Commission on this complaint at which he may present evidence and testimony and examine and cross-examine witnesses.

If the National Enforcement Commission finds that any wage, salary or other compensation payment has been made in contravention of the Act and the regulations or orders issued thereunder, the Commission may determine that disallowances may be made for one or more of the following purposes:

(1) Calculating deductions or the basis for determining gain under the Revenue Laws of the United States;

(2) Determining costs and expenses under any contract made by or on behalf of the United States, either directly or indirectly;

(3) Establishing any maximum price pursuant to the Act; and

(4) Determining the costs or expenses of any person for the purpose of any other law or regulation.

The National Enforcement Commission shall determine that the amount to be disregarded or disallowed by the executive departments and other government agencies is the entire amount of wages, salaries or other compensation paid in contravention of the Act and regulations or orders issued thereunder, unless it finds that extenuating and mitigating circumstances exist as provided in General Order 15, Economic Stabilization Agency. The National Enforcement Commission may, in consideration of such circumstances, determine that less than the entire amount of such
14 payments shall be certified to and disregarded by the executive departments or other government agencies.

ALLEGATIONS OF THE COMPLAINT

The Wage Stabilization Board, Region XII, by its Regional Counsel complains of the employer and alleges:

1. The employer is a corporation organized and existing under the laws of the State of California with its principal office and place of business at Glendale, California, and a branch plant at Tucson, Arizona, and at all times hereinafter mentioned has had in its employ units of productive and non-productive employees whose wages, salaries and other compensation are under the jurisdiction of the Wage Stabilization Board.

2. During the period beginning on or about January 26, 1951 to on or about January 1, 1952, the employer granted wage increases to the employees in the productive and non-productive units of its Glendale, California plant, and to the employees in its productive and non-productive units of its Tucson, Arizona branch plant, all of which wage increases were contrary to General Wage Stabilization Regulation 1.

Dated at San Francisco, California, this 4th day of November, 1952.

WAGE STABILIZATION BOARD
REGION XII,
By ERNEST H. NORBACK,
Regional Counsel.

Attachment: General Procedural Regulation 1, Revised.

15 *Duly sworn to by S. Carpenter. Jurat omitted in printing.*

16 In United States District Court

[Title omitted]

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION—Filed February 13, 1953

To: Arthur P. Allen, Rudolph F. Hernried, Ernest A. Norbach, Joseph I. Nachman, Jerome Smith, Charles C. Killingsworth, H. L. Enarson, Herman Lazarus, Meyer S. Ryder, Phil C. Neal, Charles O. Gregory, Helen F. Humphrey, Ralph F. Fuchs, Lawson F. Bernstein and Isaac Groner:

Please take notice that upon the verified Complaint in the above entitled action, a copy of which is annexed hereto, at the United States District Court Rooms in the U. S. Post Office and Court House Building in the City of San Francisco, State of California, on the 20 day of February, 1953, before Judge Harris, at the opening

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of the Court on that day, or as soon thereafter as counsel can be heard, a motion will be made for a Preliminary Injunction against the defendants herein in accordance with the prayer of said
17 Complaint and for such other and further relief in the premises as to the Court may seem just and proper.

Dated: February 12, 1953.

LATHAM & WATKINS,
By (S.) R. W. LUND,
Attorneys for Plaintiff.

18 [File endorsement omitted]

In United States District Court

[Title omitted]

MOTION TO DISMISS COMPLAINT—Filed February 17, 1953

Come now the defendants Arthur P. Allen, Rudolph Hernried, Ernest H. Norback, Joseph I. Nachman, Jerome Smith and Phil C. Neal, appearing through the United States Attorney for the Northern District of California, and move to dismiss the complaint herein upon the following grounds:

19 I

The complaint fails to state a cause of action upon which relief may be granted.

II

The Court lacks jurisdiction of indispensable parties.

III

This is a suit against the United States of America, which has not given its consent thereto.

IV

The plaintiff has failed to exhaust its administrative remedies.

CHAUNCEY TRAMUTOLO,
United States Attorney.
CHARLES ELMER COLLETT,
Asst. U. S. Attorney.

Of Counsel:
ERNEST H. NORBACK,
Regional Counsel,
JOSEPH I. NACHMAN,
Attorney,
Wage Stabilization Board, Region XII,
Flood Building, San Francisco, California.

20 In United States District Court

NOTICE OF MOTION

To: Latham & Watkins, 830 Statler Center, Los Angeles, California, Attorneys for the plaintiff:

Please take notice that the foregoing motion to dismiss will be brought on for hearing before the Court on Friday, February 20, 1953, at 10:00 A.M.

CHAUNCEY TRAMUTOLO,
United States Attorney.

In United States Circuit Court

ORDER SHORTENING TIME FOR SERVING MOTION—February 17, 1953

Upon motion of the United States Attorney, good cause appearing therefor, it is ordered that the time for serving the foregoing motion is shortened to 5:00 P.M., Tuesday, February 17, 1953, service to be made by depositing a copy of said motion in the United States mails, properly addressed to counsel for the plaintiff, on or before the time last mentioned.

Done at San Francisco, California, February 17, 1953.

GEORGE B. HARRIS,
United States District Judge.

21 [File endorsement omitted]

In United States District Court

[Title omitted]

AFFIDAVIT OF KEENE WATKINS—Filed February 26, 1953

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

Keene Watkins, being first duly sworn, deposes and says:

(1) He is a partner of the law firm of Latham & Watkins, General Counsel for Grand Central Aircraft Co., the plaintiff in the above entitled action (hereinafter called the "Company"), and is familiar with the Company's business, operations, and financial condition. The Company is now and has been since 1950 engaged in vital defense work under contract with the United States Air Force. The Company is presently engaged in the modification of Boeing B-47 Jet Bombers at its Tucson plant. Prior to performing work

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on the B-47's, the Tucson plant was engaged in the reconditioning modification and overhaul of B-29 bombers which were re-activated on the outbreak of the Korean War.

22 (2) The Company is a party to a V-Loan Credit Agreement under the Defense Production Act of 1950, with three Los Angeles banks. This agreement is dated August 24, 1951, and has been extended to and including September 30, 1953. Under said agreement the Company is able to obtain loans, the proceeds of which are being used for working capital in connection with its defense production contracts. The principal part of the Company's working capital has been, is being, and must be regularly supplied by these loans.

The Company has assigned its defense production contracts to said banks and payments made thereunder are deposited by said banks in a collateral account. The Company may withdraw funds from this collateral account upon presentation of a loan base supporting the then existing loan. The Company must have in accounts receivable and work in progress 110% of the then outstanding loan in order to withdraw. Weekly withdrawals from this collateral account have been made and are being made by the Company, or a new loan is made when the collateral account does not contain sufficient money to allow the withdrawal as indicated on the loan base. Said credit arrangement enables the Company to pay its weekly payroll and its other costs of production. Without such a credit arrangement the Company would be unable to perform its obligations under the Air Force contracts.

As a condition precedent to obtaining each weekly loan or withdrawal the Company is obligated to make certain representations or warranties. One of such warranties and representations is that there are no suits or proceedings pending or threatened against the Company "which would have a material adverse affect upon the financial condition or business of the Company." If the Company is unable to make this certification, under the agreement the banks may refuse to grant the requested loan or withdrawal. As set forth above, the Company, in order to fulfill its obligations under
23 its Air Force contracts, must be in a position to request loans and/or withdrawals under this agreement. The Company will suffer irreparable damage if it is unable to obtain weekly loans and/or withdrawals under said credit agreement.

(3) Under the said V-Loan Credit Agreement the Company is further obligated to maintain a tangible net worth of not less than $1,000,000. If the Company's tangible net worth should fall below the stated amount and the Company is unable to remedy this situation within 30 days after notice, the banks have the right to declare a default, whereupon the obligation of the banks to make loans is terminated and all notes issued by the Company to the

banks immediately become due and payable. As of January 4, 1953, the tangible net worth of the Company, computed in accordance with said agreement, amounted to $1,759,671.01.

(4) The claimed amount of disallowance, that is, wages allegedly paid in contravention to General Wage Stabilization Regulation No. 1, as computed by the Regional Counsel for the Twelfth Region Wage Stabilization Board, under General Order No. 15 of the Economic Stabilization Agency, is $5,561,484.11. If the National Enforcement Commission certifies, or even if the Enforcement Commissioner recommends, an income tax disallowance of the total, or any substantial part thereof, of the wage costs incurred by the Company which are alleged to have been paid in violation of General Wage Stabilization Regulation No. 1, said recommendation or certification of disallowance will reduce the Company's tangible net worth far below the figure of $1,000,000, and would result in the banks declaring a default and refusing to make further loans.

(5) The Company is further required under said V-Loan Credit Agreement to pay all taxes and assessments prior to penalty
24 date unless contested in good faith by the Company in appropriate proceedings. Any income tax disallowance certified by the National Enforcement Commission would not be subject to contest in any proceeding under the regulations issued by said Commission and the Economic Stabilization Administrator. Therefore, should an income tax disallowance of these wage costs, or any substantial part thereof, be certified by the National Enforcement Commission, the Company, in order to prevent all notes issued under the credit agreement from becoming immediately due and payable and its right to receive additional loans terminated, would have to pay, without challenge, the income tax assessed as the result of such disallowance, even though the disallowance was unconstitutional and improper under the law. There is grave doubt that payment of the income tax which would become due as a result of a disallowance of said wage costs, or any substantial part thereof, would be possible by the Company, and such payment would force the Company to cease operating.

(6) The Company is almost exclusively engaged in vital defense work under certain contracts with the United States Air Force. Said contracts contain definite schedules of required production and delivery. The Air Force has the right under the terms of said contracts to cancel said contracts if the production schedules are not met. It has the further right to charge the Company for the expense in moving the operations under such contracts to another contractor.

(7) Of necessity, the witnesses who will testify on behalf of the Company in any National Enforcement Commission hearing will be top level production supervisors. Their absence from the plant will substantially impair the Company's ability to meet the strict

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production schedules contained in said contracts with the Air Force. Any such impairment will cause irreparable damage to the Company.

25 (8) If said enforcement hearing proceeds, the Company will be forced to incur costs consisting of witnesses' time, transportation, lodging, attorneys' fees, etc., which costs will exceed $10,000.00.

KEENE WATKINS.

Subscribed and sworn to before me this 19th day of February, 1953.

LILLIAN S. FOLTZ,
Notary Public in and for the County of Los Angeles, State of California.

26 ORDER CONVENING THREE-JUDGE COURT—March 11, 1953

Whereas, in my judgment the public interest so requires, I, pursuant to the provisions of Section 2284 of Title 28, United States Code, do hereby designate and appoint the Honorable Clifton Mathews, United States Circuit Judge for the Ninth Judicial Circuit, and the Honorable Louis E. Goodman, United States District Judge for the Northern District of California, to sit with the Honorable Monroe M. Friedman, United States District Judge for the Northern District of California, and to hold the District Court for the Northern District of California, Southern Division, at San Francisco, California, on the 20th day of March, 1953, at 10:00 A.M., and to hear and determine the following cause: Grand Central Aircraft Co., a California Corporation, vs. Arthur P. Allen, Chairman Twelfth Region Wage Stabilization Board, et al., No. 32541.

Dated at San Francisco, California, this 11th day of March, 1953.

(S.) WILLIAM DENMAN,
Chief Judge, United States Court of Appeals, Ninth Judicial Circuit.

[File endorsement omitted.]

27 In United States District Court

[Title omitted]

TEMPORARY RESTRAINING ORDER—March 20, 1953

Plaintiff's motion for an interlocutory injunction and Defendants' motion to dismiss were this day argued before this Court. Said motions were submitted to the Court for decision and the Court has taken said matters under advisement.

28 Good cause appearing, it is hereby ordered that, pending the decision by this Court in said matters and until the further order of this Court, the Defendants Arthur P. Allen, Chairman Twelfth Region Wage Stabilization Board, Rudolph F. Hernried, Member Twelfth Region Wage Stabilization Board, Ernest A. Norbach, Twelfth Region Counsel, Joseph I. Nachman, Chief of Rulings and Opinions Branch Twelfth Region Wage Stabilization Board, Jerome Smith, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board, and Phil C. Neal, Enforcement Commissioner, and each of them, and their agents, servants, attorneys, and successors in office are hereby restrained and enjoined from prosecuting, hearing any charges brought against, or otherwise proceeding against Plaintiff in case No. 12-122 now pending before the National Enforcement Commission or with respect to any alleged violations of the Defense Production Act of 1950 as originally enacted and as amended, or of any regulations or orders issued pursuant thereto.

Dated: March 20, 1953.

(S.) CLIFTON MATHEWS,
United States Circuit Judge.
(S.) LOUIS E. GOODMAN,
United States District Judge.
(S.) MONROE M. FRIEDMAN,
United States District Judge.

[File endorsement omitted.]

29 [File endorsement omitted]

In United States District Court

[Title omitted]

MOTION TO VACATE TEMPORARY RESTRAINING ORDER—Filed April 3, 1953

Now come the defendants and move that the Temporary Restraining Order, issued in this cause on March 20, 1953, be vacated, on condition that no certification of disallowance under Section 405(b) of the Defense Production Act of 1950, as amended, shall be issued against plaintiff herein prior to the final conclusion of this litigation or two weeks after final determination in the enforcement proceedings now pending against plaintiff before the National Enforcement Commission of the Economic Stabilization Agency. (NEC #12-122).

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The Court is respectfully referred to the memorandum filed in support of this motion.

Respectfully submitted,

CHAUNCEY F. TRAMUTOLO,
United States Attorney.
CHARLES E. COLLETT,
Assistant United States Attorney.

30 In United States District Court

[Title omitted]

ORDER DENYING MOTION OF DEFENDANTS TO VACATE TEMPORARY RESTRAINING ORDER—May 11, 1953

The motion of defendants to vacate temporary restraining order heretofore made on March 20, 1953, was regularly heard before this Court on May 1, 1953.

Good cause appearing, it is hereby ordered that the motion of defendants to vacate said temporary restraining order is hereby denied.

Dated: May 11, 1953.

31 (S.) CLIFTON MATHEWS,
United States Circuit Judge.
(S.) LOUIS E. GOODMAN,
United States District Judge.
(S.) MONROE M. FRIEDMAN,
United States District Judge.

[File endorsement omitted.]

32 [File endorsement omitted]

In United States District Court

[Title omitted]

MEMORANDUM ORDER FOR INTERLOCUTORY INJUNCTION—May 11, 1953

The Court finds as follows:

1. That there are grave and important questions of law and of fact to be determined upon a trial of this cause by the
33 Court.

2. That if an interlocutory injunction is not granted pending the final determination of this cause, plaintiff will suffer great and irreparable damage without any adequate remedy at law therefor.

It is therefore ordered that an interlocutory injunction issue, with bond in the sum of One Thousand ($1,000.00) Dollars, with the usual conditions.

Plaintiff will present proposed interlocutory injunction according to the provisions of Rule 5(e) of Rules of Practice.

Dated: May 11, 1953.

CLIFTON MATHEWS,
United States Circuit Judge.

LOUIS E. GOODMAN,
United States District Judge.

MONROE M. FRIEDMAN,
United States District Judge.

34 [File endorsement omitted]

In United States District Court

[Title omitted]

RESERVATION OF DECISION ON MOTION TO DISMISS COMPLAINT—May 28, 1953

The motion of the defendants, Arthur P. Allen, Rudolph F. Hernried, Ernest A. Norback, Joseph I. Nachman, Jerome
35 Smith, and Phil C. Neal to dismiss the Complaint upon certain grounds set forth in said motion came on regularly to be heard on March 20, 1953, before this District Court consisting of the Honorable Clifton Mathews, United States Circuit Judge, the Honorable Louis E. Goodman, United States District Judge, and the Honorable Monroe M. Friedman, United States District Judge.

It is hereby ordered that in accordance with Rule 12 of Federal Rules of Civil Procedure, this Court postpones its disposition of said motion to dismiss until the trial on the merits, and that the defendants shall file their Answer or other responsive pleading herein within ten (10) days after notice of this order.

Dated: May 28, 1953.

CLIFTON MATHEWS,
United States Circuit Judge.

LOUIS E. GOODMAN,
United States District Judge.

MONROE M. FRIEDMAN,
United States District Judge.

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36 [File endorsement omitted]

In United States District Court

[Title omitted]

INTERLOCUTORY INJUNCTION—May 28, 1953

The petition of plaintiff for interlocutory injunction came on regularly to be heard before the above entitled District Court,
37 consisting of the Honorable Clifton Mathews, United States Circuit Judge, the Honorable Louis E. Goodman, United States District Judge, and the Honorable Monroe M. Friedman, United States District Judge, on March 20, 1953, and on May 1, 1953.

Messrs. Latham and Watkins and R. W. Lund, Esq., appeared as attorneys for plaintiff. Chauncey Tramutolo, Esq., former United States Attorney, Lloyd H. Burke, Esq., United States Attorney, Charles Elmer Collett, Esq., Assistant United States Attorney, Ernest H. Norback, Esq., Regional Counsel Joseph I. Nachman, Esq., Attorney for Wage Stabilization Board, and Isaac Groner, Esq., Chief Counsel for Wage Stabilization Committee, appeared as attorneys for defendants Arthur P. Allen, Rudolph Hernried, Ernest A. Norback, Joseph I. Nachman, Jerome Smith, and Phil C. Neal.

Argument was presented by all parties, and the matter was submitted to the Court for its decision. And now, the Court, being fully advised in the premises, does make its order for interlocutory injunction as follows:

The Court finds that there are grave and important questions of law and of fact to be determined upon a trial of this cause by the Court.

The Court finds further that if an interlocutory injunction is not granted, plaintiff will suffer great and irreparable damage without any adequate remedy at law therefor.

It is hereby ordered that during the pendency of this action and until the further order of this Court, the defendants Arthur P. Allen, Chairman Twelfth Region Wage Stabilization Board, Rudolph Hernried, Member Twelfth Region Wage Stabilization Board, Ernest A. Norback, Twelfth Region Counsel, Joseph I. Nach-
38 man, Chief of Rulings and Opinions Branch Twelfth Region Wage Stabilization Board, Jerome Smith, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board, and Phil C. Neal, Enforcement Commissioner, and each of said defendants, and their agents, servants, attorneys, and successors in office are hereby restrained and enjoined from prosecuting, hearing any charges brought against, or otherwise proceeding against plaintiff in Case No. 12-122 now pending before the said National Enforcement

Commission or with respect to any alleged violations of the Defense Production Act of 1950, as originally enacted and as amended, or of any regulations or orders issued pursuant thereto.

It is further ordered that plaintiff file its bond, to be approved by the court, in the sum of $1,000.00, conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Dated: May 28, 1953.

CLIFTON MATHEWS,
United States Circuit Judge.
LOUIS E. GOODMAN,
United States District Judge.
MONROE M. FRIEDMAN,
United States District Judge.

39-40 Bond on appeal for $1,000.00 approved and filed June 4, 1953, omitted in printing.

41 UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO COMPLAINT—Filed June 12, 1953

[File endorsement omitted]

Now come defendants, and without waiving the motion to dismiss the complaint heretofore filed by defendants, answer the allegations of the complaint as follows:

1. Defendants admit the allegations of Paragraph I.

2. Defendants admit the allegations of the first sentence of Paragraph II. For lack of knowledge and information sufficient to form a belief, defendants deny the allegations of the second sentence of Paragraph II.

3. Defendants admit the allegations of the first sentence of Paragraph III. In answer to the second sentence of Paragraph III, defendants affirmatively state that the Wage Stabilization Board established by Section 403(b) of the Defense Production Act of 1950 as amended by Section 112 of the Defense Production Act Amendments of 1952 (Act of June 30, 1952, c. 530, 66 Stat. 296) succeeded the Wage Stabilization Board established by Executive Order 10161 of September 9, 1950, as amended (15 F. R. 6105, 16 F. R. 3503, 11257). Defendants admit the allegations of the third sentence of Paragraph III. In answer to the allegation of the fourth sentence of Paragraph III, defendants affirmatively state

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that Regional Wage Stabilization Boards were established in 1951 before the Defense Production Act Amendments of 1952 and continued in existence after passage of the 1952 Amendments. In answer to the fifth sentence of Paragraph III, defendants admit that on or about December 6, 1952 the Industry Members of the National Wage Stabilization Board submitted their resignations to the President. In answer to the sixth sentence of Paragraph III, defendants state that on December 15, 1952, the Economic Stabilization Administrator issued General Order No. 19 (17 F.R.
42 11368) establishing the Wage Stabilization Committee and providing for its membership and functions. In answer to the last sentence of Paragraph III, defendants affirmatively state that on December 15, 1953, the Wage Stabilization Committee adopted Resolution No. 1 (17 F.R. 11599) ratifying, confirming and adopting all prior actions of the Wage Stabilization Board "or of any of its agents or agencies or the Economic Stabilization Administrator, except that, while any tripartite 'Board Agency' is rendered inoperative, it shall be composed of three members representative of the general public."

4. In answer to Paragraph IV, defendants allege: defendant Arthur P. Allen was, until March 31, 1953, the Chairman, and defendant Rudolph F. Hernried was, until March 6, 1953, a member, of the Wage Stabilization Board for the Twelfth Region. On the respective dates noted, defendants Allen and Hernried were terminated as such chairman and member, respectively, and since that date have had no power or authority in connection with the matters alleged in the complaint. The correct name of defendant "Norbach" is "Ernest H. Norback", and he is the Regional Counsel for the Wage Stabilization Board for the Twelfth Region. Defendant Joseph I. Nachman and defendant Jerome Smith were, until May 31, 1953, Chief Counsel of the Rulings and Opinions Branch and Chief Enforcement Attorney, respectively, of the Wage Stabilization Board for the Twelfth Region. On May 31, 1953, defendants Nachman and Smith were terminated as Chief of the Rulings and Opinions Branch and Chief Enforcement Attorney of the Wage Stabilization Board for the Twelfth Region, and since that date have had no power or authority in connection with the matters alleged in the complaint. Defendants Killingsworth, Enarsen and Lazarus were Chairman and Members, respectively, of the Wage Stabilization Committee until March 13, 1953. Defendant Ryder was a Member of the Wage Stabilization Committee until February 12, 1953. As of said respective dates said defendants resigned from said respective positions and since said dates have had no power or authority in connection with the matters alleged in the complaint. Defendants Killingsworth, Enarson, Lazarus and Ryder are not residents of California but, on the contrary, during their

incumbency in office were officially resident in the District of Columbia and are not subject to suit in this court and were not served with process. Defendant Groner is Chief Counsel
43 for the Wage Stabilization Board. Defendant Groner is not a resident of California but is, on the contrary, officially resident in the District of Columbia and is not subject to suit in this court and was not served with process.

5. Defendants admit the allegations of Paragraph V and allege affirmatively that the National Enforcement Commission was given power in fact and in law to determine the amount of wages, salaries or other compensation paid in violation of regulations promulgated pursuant to the Defense Production Act of 1950, as amended, and to certify to other governmental agencies the amount of such payments or accruals of wages, salaries or other compensation to be disregarded and disallowed for the purpose of calculating or determining deductions, gains, costs or expenses under other laws or regulations.

6. In answer to Paragraph VI, defendants allege: Charles O. Gregory, Helen F. Humphrey and Ralph F. Fuchs were Chairman and Members of the National Enforcement Commission through May 31, 1953. Defendant Lawson F. Bernstein was Counsel and Alternate Member of the National Enforcement Commission through May 31, 1953. As of May 31, 1953, defendants Gregory, Humphrey and Fuchs resigned as such chairman and members and since that date have had no power or authority in connection with the matters alleged in the complaint. As of May 31, 1953, defendant Bernstein resigned as Counsel and Alternate Member of the National Enforcement Commission, and on June 1, 1953 became a member of said Commission. Defendants Gregory, Humphrey, Fuchs and Bernstein are not residents of California but, on the contrary, during their incumbency in office were, and defendant Bernstein is, officially resident in the District of Columbia, and are not subject to suit in this court and were not served with process.

7. Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VII.

8. Defendants admit the allegation of the first sentence of Paragraph VIII. Defendants deny the allegations of the second sentence of Paragraph VIII.

9. Defendants admit the allegations in Paragraph IX.

10. Defendants admit the allegations contained in Paragraph K.

11. In answer to Paragraph XI, defendants affirmatively state that defendants Groner and Norback presently intend that the pending enforcement proceeding be prosecuted to final deter-
44 mination. Defendants deny that the other defendants named in Paragraph XI threaten to prosecute said complaint before the National Enforcement Commission.

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12. In answer to Paragraph XII, defendants state that the National Enforcement Commission intends to conduct the proceedings pending against Plaintiff to final determination. Defendants deny that named defendants Humphrey and Fuchs threaten to conduct a hearing on the allegations of the said complaint and to render decision thereafter.

13. Defendants deny the allegations of Paragraph XIII and XIV.

ADDITIONAL DEFENSES

1. The court has no jurisdiction over defendants Charles C. Killingsworth, H. L. Enarson, Herman Lazarus, Meyer S. Ryder, Charles O. Gregory, Helen F. Humphrey, Ralph Fuchs, Lawson F. Bernstein and Isaac Groner in that they are not residents of California.

2. The case is moot as to defendants Arthur P. Allen, Rudolph F. Hernried, Joseph I. Nachman, Jerome Smith, Charles C. Killingsworth, H. L. Enarson, Herman Lazarus, Meyer S. Ryder, Charles O. Gregory, Helen F. Humphrey and Ralph F. Fuchs.

3. The court lacks jurisdiction of this action in that there is an absence of indispensable parties, i.e. the members of the National Enforcement Commission.

4. The court lacks jurisdiction of the action in that plaintiff has failed to exhaust its administrative remedies.

5. The complaint fails to state a claim upon which any relief can be granted.

6. The complaint fails to state a claim upon which any injunctive relief can be granted in that there is no showing of threatened irreparable injury to plaintiff.

LLOYD H. BURKE,
United States Attorney.

CERTIFICATE OF SERVICE (OMITTED IN PRINTING)

45 IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF ASSOCIATION OF COUNSEL—Filed June 26, 1953

To the United States Attorney, LLOYD H. BURKE, Attorney for Defendants:

Please take notice that the firm of Littler, Lauritzen & Mendelson, attorneys at law, 593 Market Street, San Francisco 5, California,

has been retained by plaintiff's attorneys as associate counsel in the above-entitled case.

Dated: June 24, 1953.

LATHAM & WATKINS,
By (S.) R. W. LUND,
Attorneys for Plaintiff.

(Affidavit of Mailing)

[File endorsement omitted]

46 [File endorsement omitted]

In United States District Court

[Title omitted]

STIPULATION FOR AMENDMENT OF COMPLAINT AND FOR SERVICE AND FILING OF SUPPLEMENTAL COMPLAINT—Filed July 20, 1953

It is hereby stipulated by and between counsel for the parties hereto that Plaintiff may file the amendment to the complaint attached hereto, and service of a copy thereof is hereby accepted. Each and every allegation therein is deemed denied by defendants.

It is further stipulated by and between counsel for the parties hereto that Plaintiff may file the supplemental complaint at-
47 tached hereto, and service of a copy thereof is hereby accepted. Each and every allegation therein is deemed denied by defendants.

Dated: July 20, 1953.

LATHAM & WATKINS,
LITTLER, LAURITZEN & MENDELSON,
By ROBERT LITTLER,
Attorney for Plaintiff.
LLOYD H. BURKE,
United States Attorney.
By GEORGE A. BLACKSTONE,
Asst. United States Attorney,
Attorneys for Defendants.

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48 IN UNITED STATES DISTRICT COURT

[Title omitted]

FIRST AMENDMENT TO COMPLAINT FOR PRELIMINARY AND PERPETUAL INJUNCTION—Filed July 20, 1953

Plaintiff, in accordance with Rule 15(a) of the Federal Rules of Civil Procedure, amends its complaint in the above entitled action as follows:

49 (1) That there is added to paragraph XIII of said complaint the following subparagraph (h), which reads as follows:

"(h) Neither the National Enforcement Commission nor the Wage Stabilization Board or their respective members, attorneys, agents, or employees have ever had and do not now have authority to determine whether wage or salary payments were made in contravention of the Defense Production Act of 1950, as amended (hereinafter called 'the Act'), in that

"(1) The Act does not vest in the President or any official, board, commission or agency of the Executive Branch, the power to determine whether or not any wage or salary payments were made in contravention of the Act or regulations or orders thereunder for the purpose of disallowing such payments under other laws and regulations, or for any other purpose.

"(2) The purported delegation by the Economic Stabilization Administrator to the National Enforcement Commission and the purported assumption by said Commission of independent jurisdiction, authority, and power to make final and conclusive determinations which were purportedly nonreviewable and which, upon certification by the Commission, were purportedly binding upon other governmental agencies, was invalid, in violation of the Act and void.

"(3) Proceedings to establish a violaton of wage or salary stabilization regulations or orders have been and are cognizable, and cognizable only, in the district courts of the United States, in suits, actions or prosecutions in-
50 stituted under the supervision and control of the Attorney General of the United States.

"(4) While the expiration on April 30, 1953, of Title IV of the Act relating to wage and salary stabilization, terminated all authority of the defendants and of every other official, board, commission or agency of the Executive Branch, as above alleged, there was, nevertheless, reserved

to the district courts of the United States continued jurisdiction in suits, actions or prosecutions under the supervision and control of the Attorney General, with respect to alleged violations of wage and salary stabilization regulations alleged to have been committed prior to May 1, 1953 and with respect to liabilities, if any, resulting therefrom."

(2) That lines 10 through 31, page 10, paragraph XV, and lines 1 and 2, page 11, of said paragraph XV, are hereby stricken and in place thereof the following is inserted:

"(a) Plaintiff is now and has been since 1950 engaged in vital defense work under contract with the United States Air Force. Plaintiff is presently engaged in the modification of Boeing B-47 Jet Bombers at its Tucson plant. Prior to performing work on the B-47's the Tucson plant was engaged in the reconditioning, modification, and overhaul of B-29 bombers which were re-activated on the outbreak of the Korean War.

"(b) Plaintiff is a party to a V-Loan Credit Agreement under the Defense Production Act of 1950, with three Los Angeles banks. This Agreement is dated August 24, 1951, and has been extended to and including September 30, 1953.

Under said agreement Plaintiff is able to obtain loans,
51 the proceeds of which are being used for working capital in connection with its defense production contracts. The principal part of Plaintiff's working capital has been, is being, and must be regularly supplied by these loans.

Plaintiff has assigned its defense production contracts to said banks and payments made thereunder are deposited by said banks in a collateral account. Plaintiff may withdraw funds from this collateral account upon presentation of a loan base supporting the then existing loan. Plaintiff must have in accounts receivable and work in progress 110% of the then outstanding loan in order to withdraw. Weekly withdrawals from this collateral account have been and are being made by Plaintiff, or a new loan is made when the collateral account does not contain sufficient money to allow the withdrawal as indicated on the loan base. Said credit arrangement enables Plaintiff to pay its weekly payroll and its other costs of production. Without such a credit arrangement Plaintiff would be unable to perform its obligations under the Air Force contracts. Plaintiff will suffer irreparable damage if it is unable to obtain weekly loans and/or withdrawals under said credit agreement.

"(c) Under said V-Loan Credit Agreement Plaintiff is further obligated to maintain a tangible net worth of not less than $1,000,000. If Plaintiff's tangible net worth should

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fall below the stated amount and Plaintiff is unable to remedy this situation within 30 days after notice, the banks have the right to declare a default, whereupon the obligation of
52 the banks to make loans is terminated and all notes issued by Plaintiff to the banks immediately become due and payable. As of January 4, 1953, the tangible net worth of Plaintiff, computed in accordance with said agreement, amounted to $1,759,671.01.

"(d) The claimed amount of disallowance, that is, wages allegedly paid in contravention to General Wage Stabilization Regulation No. 1, as computed by the Regional Counsel for the Twelfth Region Wage Stabilization Board, under General Order No. 15 of the Economic Stabilization Agency, is $5,561,484.11. If the National Enforcement Commission certifies, or even if the Enforcement Commissioner recommends, an income tax disallowance of the total, or any substantial part thereof, of the wage costs incurred by Plaintiff which are alleged to have been paid in violation of General Wage Stabilization Regulation No. 1, said recommendation or certification of disallowance will reduce Plaintiff's tangible net worth far below the figure of $1,000,000, and would result in the banks declaring a default and refusing to make further loans.

"(e) Plaintiff is further required under said V-Loan Credit Agreement to pay all taxes and assessments prior to penalty date unless contested in good faith by Plaintiff in appropriate proceedings. Any income tax disallowance certified by the National Enforcement Commission would not be subject to contest in any proceeding under the regulations issued by said Commission and the Economic Stabilization Administrator. Therefore, should an income tax disallowances of these
53 wage costs, or any substantial part thereof, be certified by the National Enforcement Commission, Plaintiff, in order to prevent all notes issued under the credit agreement from becoming immediately due and payable and its right to receive additional loans terminated, would have to pay, without challenge, the income tax assessed as the result of such disallowance, even though the disallowance was unconstitutional and improper under the law. There is grave doubt that payment of the income tax which would become due as a result of a disallowance of said wage costs, or any substantial part thereof, would be possible by Plaintiff, and such payment would force Plaintiff to cease operating.

"(f) Plaintff is almost exclusively engaged in vital defense work under certain contracts with the United States Air Force. Said contracts contain definite schedules of required production and delivery. The Air Force has the right under the

terms of said contracts to cancel said contracts if the production schedules are not met. It has the further right to charge Plaintiff for the expense in moving the operations under such contracts to another contractor.

"(g) Of necessity, the witnesses who will testify on behalf of Plaintiff in any National Enforcement Commission hearing will be top level production supervisors. Their absence from the plant will substantially impair Plaintiff's ability to meet the strict production schedules contained in said contracts with the Air Force. Any such impairment will cause irreparable damage to Plaintiff.

54 "(h) Plaintiff's employees and officers will be required to spend large amounts of time at great cost to plaintiff in gathering and presenting date and acting as witnesses for the purposes of Plaintiff's defense. Plaintiff will also be required to retain counsel at further cost to Plaintiff. If said enforcement hearing proceeds, such costs will exceed $10,000. All of said expenses incident to the conduct to avoid proceeding before the National Enforcement Commission will be irrevocably lost to Plaintiff.

"(i) Plaintiff will be threatened for an extended period of time with the retroactive disallowance by one or more government agencies of the entire amount of wages paid to its employees during the period of almost a year which is brought into question by said complaint. Said contingent liability will prevent Plaintiff from entering into contracts and conducting and expanding its business in normal fashion until said liability is determined.

"(j) Any order issued by the said Commission certifying disallowance of Plaintiff's costs to one or more government agencies will require said agencies to make the said disallowance at great cost to Plaintiff, although Plaintiff will be unable to attack such action before said agencies or before any court."

Dated: July 13, 1953.

LATHAM & WATKINS and LITTLER,
LAURITZEN & MENDELSON,
By R. W. LUND,
Attorneys for Plaintiff,
Grand Central Aircraft Co.

55 *Duly sworn to by S. Carpenter. Jurat omitted in printing.*

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56 IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL COMPLAINT FOR PERPETUAL INJUNCTION—Filed July 20, 1953

Plaintiff, Grand Central Aircraft Co., by leave of Court first had and obtained, brings this its Supplemental Complaint herein and alleges as follows:

I

Since the filing of the original complaint herein the following material facts have occurred:

A. The expiration, on April 30, 1953, of Title IV of the Act, relating to wage stabilization, terminated all authority conferred thereunder, and thus terminated any power or authority which the President, the National Enforcement Commission, or any other official, board, or agency of the Executive Branch may theretofore have had either to determine whether or not wage or salary payments had been made in contravention of the Act or to
57 determine the extent to which any such wage or salary payments should be disallowed for the purpose of other laws or regulations.

B. None of the defendants has any authority, jurisdiction or power to prosecute, hear or determine any complaint against the plaintiff alleging that it made payments in contravention of Wage Stabilization Board regulations or orders or that any such payments should be disallowed for the purposes of any other law or regulation.

WHEREFORE, plaintiff prays that the relief prayed for in the original complaint herein be granted.

Dated: July 13, 1953.

LATHAM & WATKINS and LITTLER, LAURITZEN & MENDELSON,
By R. W. LUND,
Attorneys for Plaintiff.

58 *Duly sworn to by R. W. Lund. Jurat omitted in printing.*

59 IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING AMENDMENT OF COMPLAINT AND APPROVING SERVICE AND FILING OF SUPPLEMENTAL COMPLAINT PURSUANT TO STIPULATION—Filed July 20, 1953

Upon reading and considering the Stipulation by and between the attorneys for the respective parties herein and upon the request of Plaintiff, it is

Ordered that Plaintiff may amend its Complaint herein in the form annexed to said Stipulation and that said Complaint is hereby amended accordingly and each and every allegation in the Amendment of Complaint is deemed denied pursuant to said Stipulation.

Further ordered that receipt of service of the Supplemental Complaint in the form annexed to said Stipulation having been acknowledged by Defendants in said Stipulation, the service of and filing herein of said Supplemental Complaint is ap-
60 proved and each and every allegation therein is deemed denied pursuant to said Stipulation.

Dated: July 20th, 1953.

(S.) CLIFTON MATHEWS,
Judge of the United States,
Court of Appeals.

(S.) LOUIS E. GOODMAN,
United States District Judge.

(S.) MONROE M. FRIEDMAN,
United States District Judge.

[File endorsement omitted]

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61 [File endorsement omitted]

In United States District Court for the Northern District of California, Southern Division

No. 32541

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, PLAINTIFF,

vs.

ARTHUR P. ALLEN, Chairman, Twelfth Region Wage Stabilizaton Board; RUDOLPH F. HERNRIED, Member Twelfth Region Wage Stabilization Board; ERNEST A. NORBACH, Twelfth Region Counsel, JOSEPH I. NACHMAN, Chief of Rulings and Opinions Branch Twelfth Region Wage Stabilization Board; JEROME SMITH, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board; CHARLES C. KILLINGSWORTH, Chairman Wage Stabilization Committee; H. L. ENARSON, HERMAN LAZARUS and MEYER S. RYDER, Members of Wage Stabilization Committee; PHIL C. NEAL, Enforcement Commissioner; CHARLES O. GREGORY, Chairman National Enforcement Commission; HELEN F. HUMPHREY, RALPH F. FUCHS and LAWSON F. BERNSTEIN, Members of National Enforcement Commission; ISAAC GRONER, Chief Counsel for Wage Stabilization Committee; DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, and DOE SIX, DEFENDANTS

JUDGMENT OF PERMANENT INJUNCTION—July 31, 1953

The petition of plaintiff for permanent injunction came on regularly to be heard on July 24, 1953, before the above entitled District Court, consisting of the Honorable Clifton Mathews, United
62 States Circuit Judge, the Honorable Louis E. Goodman, United States District Judge, and the Honorable Monroe M. Friedman, United States District Judge.

All parties appeared by counsel, and the Court heard the evidence and the arguments of counsel, and briefs were filed by the parties; the matter was submitted to the Court for its decision.

Upon due consideration thereof, it appears to the Court, for the reasons stated in the Opinion filed, that petitioner should be granted the relief prayed for in its petition. Findings of Fact and Conclusions of Law have heretofore been filed.

It is hereby ordered, adjudged and decreed that the defendants Arthur P. Allen, Chairman, Twelfth Region Wage Stabilization Board, Rudolph Hernried, Member Twelfth Region Wage Stabiliza-

tion Board, Ernest A. Norbach, Twelfth Region Counsel, Joseph I. Nachman, Chief of Rulings and Opinions Branch Twelfth Region Wage Stabilization Board, Jerome Smith, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board, and Phil C. Neal, Enforcement Commissioner, and each of said defendants, and their agents, servants, attorneys, and successors in office are hereby permanently restrained and enjoined from prosecuting, hearing any charges brought against, or otherwise proceeding against plaintiff in Case No. 12-122 now pending before the said National Enforcement Commission or with respect to any alleged violations of the Defense Production Act of 1950, as originally enacted and as amended,
63 or of any regulations or orders issued pursuant thereto.

Dated: July 31, 1953.

CLIFTON MATHEWS,
United States Circuit Judge.

LOUIS E. GOODMAN,
United States District Judge.

MONROE M. FRIEDMAN,
United States District Judge.

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64 [File endorsement omitted]

In United States District Court for the Northern District of California, Southern Division

No. 32541

GRAND CENTRAL AIRCRAFT CO., a California Corporation, PLAINTIFF

vs.

ARTHUR P. ALLEN, Chairman, Twelfth Region Wage Stabilization Board; RUDOLPH F. HERNREID, Member Twelfth Region Wage Stabilization Board; ERNEST A. NORBACH, Twelfth Region Counsel; JOSEPH I. NACHMAN, Chief of Rulings and Opinions and Branch Twelfth Region Wage Stabilization Board; JEROME SMITH, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board; CHARLES C. KILLINGSWORTH, Chairman Wage Stabilization Committee; H. L. ENARSON, HERMAN LAZARUS and MEYER S. RYDER, Members of Wage Stabilization Committee; PHIL C. NEAL, Enforcement Commissioner; CHARLES O. GREGORY, Chairman National Enforcement Commission; HELEN F. HUMPHREY, RALPH F. FUCHS and LAWSON F. BERNSTEIN, Members of National Enforcement Commission; ISAAC GRONER, Chief Counsel for Wage Stabilization Committee; DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE and DOE SIX, DEFENDANTS

Messrs. Latham and Watkins and R. W. Lund, Esq., of Los Angeles, Calif., Attorneys for plaintiff.

Lloyd H. Burke, U. S. Attorney, Charles Elmer Collett, Assistant U. S. Attorney, George A. Blackstone, Assistant U. S. Attorney, Ernest A. Norbach, Twelfth Region Counsel, Joseph I. Nachman, Chief of Rulings and Opinions Branch Twelfth Region Wage
65 Stabilization Board, of San Francisco, Calif., and Isaac Groner, Chief Counsel for Wage Stabilization Committee, of Washington, D. C., for defendants.

Before MATHEWS, Circuit Judge, and GOODMAN and FRIEDMAN, District Judges

OPINION—July 31, 1953

FRIEDMAN, *Circuit Judge:*

This is an action to enjoin officials of the Wage Stabilization Board and of the National Enforcement Commission from continuing administrative proceedings against Grand Central Aircraft Company in Case No. 12-122 now pending before the Commission. The

charges brought by the Wage Stabilization Board in a Complaint filed on November 4, 1952, allege violations of Sec. 405(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2105(b)) and of regulations and orders issued thereunder. Specifically, the Board alleged that Grand Central Aircraft Company had made wage payments to its employees in 1951 in contravention of General Wage Stabilization Regulation 1, popularly known as "the wage freeze", promulgated by the Economic Stabilization Administrator. A hearing on the allegations of that Complaint was set for February 24, 1953, before Enforcement Commissioner Phil C. Neal, at Los Angeles, California. On February 13, 1953, the company filed its Complaint in the District Court for the Northern District of Californa, Southern Division, against regional and national officials of the Wage Stabilization Board and of the National Enforcement Commission to enjoin them from proceeding with the administrative hearing. The administrative hearing was then postponed, pending judicial action. On February 17, 1953, the defendant officials moved to dismiss the Complaint. On March 11,

1953, a Three-judge Court was appointed, pursuant to 28

66 U.S.C. 2282; and after a hearing on March 20, 1953, the Court issued a Temporary Restraining Order directed against the regional officails who were within the Court's jurisdiction and took under advisement the company's motion for a preliminary injunction and the defendants' motion to dismiss the Complaint. On April 2, 1953, the defendants filed a motion to vacate the Temporary Restraining Order; the Three-judge Court heard argument on that motion and took the matter under advisement on May 1, 1953. On May 11, 1953, the Court issued a Memorandum Order for Interlocutory Injunction, finding that there were grave and important questions of law and fact to be determined on trial, and that if an Interlocutory Injunction were not granted, the company would suffer irreparable damage and ordered that an Interlocutory Injunction issue. On May 28, 1953, the Court issued the Interlocutory Injunction enjoining the regional officials of the Wage Stabilization Board and the Enforcement Commissioner from proceeding with the administrative proceedings upon conditions that plaintiff post bond in the sum of One Thousand ($1,000.00) Dollars for the payment of costs and damages, should it develop that any party was wrongfully enjoined. (The Court reserved decision on the motion to dismiss the Complaint.)

The Acting Solicitor General of the United States applied to the Supreme Court on June 5, 1953, for a stay of the Interlocutory Injunction granted by this Court; the Supreme Court denied the application on June 15, 1953. The case came on for trial before this Court on July 24, 1953, and was submitted that day.

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The undisputed evidence convincingly showed that the plaintiff would be irreparably damaged by the continuance of the administrative proceedings. The plaintiff is engaged in the recon-
67 ditioning of aircraft engines and equipment. It employs several thousand employees. Its plants are located in Southern California and Arizona. Over seventy-five per cent of its production is for defense purposes arising out of government contracts. During the course of the administrative proceedings, plaintiff was advised in writing by the representatives of the Enforcement Commission that it proposed to assess penalties by way of a recommendation of disallowance of deductons for tax purposes, if the evidence showed violation of the statute and regulations, in maximum amounts of from Two to Three Million Dollars. The testimony showed that the plaintiff had established a credit of Six Million Dollars with a group of Los Angeles banks and that its current borrowings were in the excess of One Million Dollars. The evidence further showed that the continuance of the administrative proceedings with the over-hanging threat of the disallowance penalties would cause the banks to withdraw the credit extended, resulting in a shut down of plaintiff's business, cancellation of its government contracts, and consequent bankruptcy. Without more, the evidence is persuasive as to irreparable damage.

Plaintiff urges several grounds which it claims legally justify the issuance of a permanent injunction, among them asserted Constitutional infirmities in the Defense Production Act of 1950. Since we are of the opinion that the cause can be justly decided without resolving the tendered Constitutional questions, we do not reach them.[1]

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[1] It has long been an established legal policy that Courts should not unnecessarily determine Constitutional Issues. *Hurd* v. *Hodge*, 334 U.S. 24, 30, 68 S. Ct. 847, 92 L. Ed. 1187; *Rescue Army* v. *Municipal Court*, 1947, 331 U.S. 549, at Page 569, 67 S. Ct. 1409, 91 L. Ed. 1666; *Alma Motor Co.* v. *Timkin-Detroit Axle Co.*, 1946, 329 U.S. 129, 136, 67 S. Ct. 231, 91 L. Ed. 128; *Arkansas Fuel Co.* v. *State of Louisiana ex rel. Muslow*, 1938, 304 U.S. 197, 202, 58 S. Ct. 852, 82 L. Ed. 1287; *Baker* v. *Grice*, 1898, 169 U.S. 292, 18 S. Ct. 323, 42 L. Ed. 748.

There would appear to be no good reason why this doctrine should not apply to courts constituted as this one is. See *Morgan* v. *U. S.*, 107 F. Supp. 501, at 504, and also *United Air Lines, Inc.* v. *Public Utilities Commission*, 109 F. Supp. 13.

This Three-judge Court, having properly acquired jurisdiction, has power to pass upon non-constitutional questions involved in the suit. *Louisville & Nashville Railroad Co.* v. *Garrett*, 231 U.S. 298; *Fireman's Ins. Co.* v. *Beha D. C.*, 30 F. 2d 539; *United Air Lines, Inc.* v. *Public Utilities Commission, supra.*

Other substantial grounds are urged to support the judgment in favor of plaintiff: That (1) the savings clause in the general
68 statute (1 U.S.C. 109) does not cover this administrative proceeding; that (2) this is not a suit, action, or prosecution under the savings clause of the Defense Production Act of 1950 (50 U.S.C. App. 2156(b)); and that (3) the provisions for the termination of the Act provide only for a continued existence for a period not to exceed six months for purposes of liquidation, and that this administratve procedure is not part of the liquidation. (50 U.S.C. App. 2166(b)(3).) These contentions appear to have substantial merit, but we do not find it necessary to pass upon them.

It is sufficient to say that we are unable to perceive in the Defense Production Act any authority for the imposition of penalties by the National Enforcement Commission. To the contrary, the statute vests jurisdiction in the District Courts of the United States of all actions under the Act to enforce any liability or duty created thereby. (50 U.S.C. App. 2156(b).) It is true that the Act
69 authorizes the President to prescribe the *extent* to which any unauthorized payment made by an employer to any employee may be disregarded by the Executive Departments (such as the Treasury) in determining gain for tax purposes. (50 U.S.C. App. 2105(a).) But the statute nowhere vests in the President or in any delegated agency the power to actually impose penalties.

We unanimously conclude that a judgment for a permanent injunction as prayed should enter herein. See *Jones Aircraft Corporation* v. *Franklin, et al.*, No. 5122, District Court, Northern District of Texas, decided July 15, 1953, not yet reported.

Dated: July 31, 1953.

MONROE M. FRIEDMAN,
United States District Judge.

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70 [File endorsement omitted]

In United States District Court

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—July 31, 1953

The above entitled cause came on regularly for trial before the above entitled Court on July 24, 1953. Parties hereto appearing by their respective counsel, and the Court having heard evi-
71 dence and the testimony of witnesses and the arguments of counsel and briefs having been submitted.

Now therefore, upon due consideration, the Court makes the following:

FINDINGS OF FACT

1. The allegations of Paragraphs II, III, V, VI, VIII, IX, X, XI, and XII of plaintiff's Complaint are true.

2. Prosecution of the Complaint issued by the Wage Stabilization Board will cause irreparable damage to the plaintiff for the reasons stated in Paragraph XV of plaintiff's Complaint. The Court further finds that the continuance of the threatened administrative proceeding will cause plaintiff's bank credit to be shut off and will disable plaintiff from continuing its operations.

CONCLUSIONS OF LAW

The Court finds that there is no statutory authority for the imposition of penalties by the National Enforcement Commission and the threat of such enforcement will cause irreparable damage to the plaintiff and, therefore, a permanent injunction should be granted restraining the defendants from further prosecution of the proceeding against plaintiff in Case No. 12-122 now pending before the National Enforcement Commission with respect to any alleged violations of the Defense Production Act of 1950, as originally enacted and as amended, or of any regulations or orders issued pursuant thereto.

Let a permanent injunction issue forthwith.

Dated: July 31, 1953.

CLIFTON MATHEWS,
United States Circuit Judge.

LOUIS E. GOODMAN,
United States District Judge.

MONROE M. FRIEDMAN,
United States District Judge.

72 [File endorsement omitted]

In United States District Court

[Title omitted]

PETITION FOR APPEAL—Filed September 24, 1953

The Acting Solicitor General, on behalf of the defendants-appellants, prays that an appeal be allowed to the Supreme Court of the United States from the judgment of permanent injunction entered by this Court on July 31, 1953, and from each and every part thereof; that citation be issued in accordance with law; and that the material parts of the record, proceedings and papers upon which said judgment was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules of said Court in such cases made and provided.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

September 22, 1953.

73 [File endorsement omitted]

In United States District Court

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 24, 1953

The Acting Solicitor General, on behalf of the defendants-appellants, hereby files the following Assignment of Errors upon which he will rely in the prosecution of his appeal to the Supreme Court of the United States from the Judgment of Permanent Injunction of this Court entered on July 31, 1953.

The Court erred:

1. In holding that Section 405(b) of the Defense Production Act of 1950 does not authorize administrative imposition of the disallowance sanction provided by that Section.

2. In holding that prosecution of the administrative proceeding initiated by the Wage Stabilization Board before the National Enforcement Commission will cause irreparable damage to plaintiff-appellee.

3. In granting the judgment of permanent injunction restraining the defendants-appellants from prosecuting and hearing administrative proceeding No. 12-122 pending before the National Enforcement Commission or with respect to any alleged violations of the

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Defense Production Act of 1950, as originally enacted and as
74 amended, or of any regulations or orders issued pursuant thereto.

4. In issuing and entering its judgment of permanent injunction.

Wherefore, defendants-appellants pray that the judgment of permanent injunction of the District Court be reversed and set aside, and for such other relief as the Court may deem fit and proper.

ROBERT L. STERN,
Acting Solicitor General.

September 22, 1953.

75 [File endorsement omitted]

In United States District Court

[Title omitted]

ORDER ALLOWING APPEAL—September 24, 1953

The Acting Solicitor General, having made and filed his petition praying for an appeal to the Supreme Court of the United States from the judgment of permanent injunction of this Court in this cause entered on July 31, 1953, and from each and every part thereof, and having presented his assignment of errors and prayer for reversal and his statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that citation shall issue in accordance with law.

LOUIS E. GOODMAN,
Judge.

September 24th, 1953.

76-101 Citation in usual form showing service omitted in printing.

102-131 STATEMENT REQUIRED BY PARAGRAPH 2, RULE 12 OF THE RULES OF THE SUPREME COURT (omitted in printing)

132 In the United States District Court for the Northern District of California, Southern Division

PRAECIPE (omitted in printing)

133-134 Clerk's Certificate to foregoing transcript omitted in printing.

135 In the Supreme Court of the United States, October Term, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN, TWELFTH REGION WAGE STABILIZATION BOARD; ET AL., DEFENDANTS-APPELLANTS

v.

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, PLAINTIFF-APPELLEE

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed November 4, 1953

1. The Acting Solicitor General, on behalf of the appellants in the above-entitled proceeding, adopts as his statement of points to be relied upon the assignment of errors heretofore filed in connection with this appeal.

2. The Acting Solicitor General designates the entire record, as filed in the above-entitled proceeding, for printing by the Clerk of this Court.

ROBERT L. STERN,
Acting Solicitor General.

November 4, 1953.

136-137 [File endorsement omitted.]

137a In the Supreme Court of the United States, October Term, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN TWELFTH REGION WAGE STABILIZATION BOARD, ET AL., APPELLANTS,

v.

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, APPELLEE

STIPULATION AS TO PRINTING OF THE RECORD

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that the following

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parts of the record shall be printed by the Clerk of the Supreme Court:

The entire record and this stipulation except:

1. The transcript of the District Court proceedings of July 24, 1953, provided, however, that pages 1 through 67 shall be printed.

2. The exhibits attached to said District Court proceedings; provided, however, that Plaintiff's Exhibits B and F shall be printed.

It is further stipulated and agreed that any of the parties may refer in their briefs and argument to the entire record filed in the Supreme Court, including any part thereof which has not been printed.

ROBERT L. STERN,
Acting Solicitor General,
Counsel for Appellant.

PAUL R. WATKINS,
DANA LATHAM,
RICHARD W. LUND,
Counsel for Appellee.

January 22, 1954.

138 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN, ETC., ET AL., APPELLANTS

vs.

GRAND CENTRAL AIRCRAFT COMPANY

ORDER NOTING PROBABLE JURISDICTION—January 4, 1954

Appeal from the United States District Court for the Northern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

139 THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Before Hon. Clifton Mathews, Circuit Judge; Hon. Louis E. Goodman, District Judge; Hon. Monroe M. Friedman, District Judge

No. 32541

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, PLAINTIFF

vs.

ARTHUR P. ALLEN, CHAIRMAN TWELFTH REGION WAGE STABILIZATION BOARD, ET AL., DEFENDANTS

Proceedings on Hearing of Complaint for Preliminary and Perpetual Injunction

REPORTER'S TRANSCRIPT

Friday, July 24, 1953

APPEARANCES

For Plaintiff: Latham & Watkins, by Richard W. Lund, Esq., and Littler, Lauritzen & Mendelson, by Robert Littler, Esq.

For Defendants: Lloyd H. Burke, Esq., United States Attorney, by Elmer Collett, Esq., Asst. U. S. Attorney, and Isaac Groner Esq., Wage Stabilization Board.

140 MORNING SESSION, FRIDAY, JULY 24, 1953, 10:00 A. M.

The CLERK: Grand Central Aircraft Company, a California corporation, plaintiff, versus Arthur P. Allen, Chairman Twelfth Region Wage Stabilization Board, et al., defendants, for trial.

Will respective counsel please state their names for the record?

Mr. LUND: Richard W. Lund of Latham and Watkins; Robert Littler of Littler, Lauritzen and Mendelson, for the plaintiff.

Mr. COLLETT: Elmer Collett, United States Attorney's office. Mr. Groner, who has appeared before the court on behalf of the Wage Stabilization Board, will present the matter as to the defense.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge MATHEWS: Judge Friedman, you have a statement to make?

Judge FRIEDMAN: I want to inform counsel that depending upon the length of the trial and time it takes to decide this case, what I am about to state may have some bearing. My term of office will

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terminate with the adjournment of Congress and if this case is going to take some time there either should be some kind of a stipulation that the two judges remaining should decide the matter or something worked out to the satisfaction of counsel.

Has counsel any idea how long it will take to try this case?

141 Mr. LUND: I don't see that it should take beyond the day, Your Honor.

Mr. GRONER: It should not take beyond the day.

Judge FRIEDMAN: Would counsel be willing to stipulate, if I am unable to be here, that the two remaining judges shall determine the matter?

Mr. LUND: Your Honor, we would certainly be willing to stipulate. We are faced with the problem that in the event the two remaining judges were undecided we would not be able to get a decision. I suppose in that circumstance, it would just be necessary to get a third judge in. Except for that eventuality, which may be remote, your suggestion appears very practical. We would go along with it.

Mr. GRONER: We are willing to so stipulate.

Judge MATHEWS: You have in mind the possible objection that—no objection being made, as I understand; the possibility of disagreement is always present while you have an even number of judges hearing this matter. If counsel cared to enter into this stipulation, it might still be subject to approval by the remaining judges and we might ask the chief judge if that situation should arise, which I hope will not arise, we might deem it necessary to ask the chief judge to name another judge to sit with us to avoid the possibility of that which has been suggested.

142 As I understand, counsel on both sides are willing to enter into the stipulation if there is no objection?

Mr. LUND: No, Your Honor, providing there is provision for breaking a deadlock.

Mr. COLLETT: It has occurred in hearings before the Court of Appeals of occasion, one of the judges has not been present and the stipulation has been entered into that the judge who was not present may sit on the case and although he did not hear the argument, the reading of the briefs and such consultations that might occur between the judges, would be sufficient perhaps, if it were feasible to appoint another judge, that such further stipulation might cover that, that the briefs and transcript of the record before this court, instead of having heard it, that a reading of it would be sufficient to permit him to sit on the case.

Judge MATTHEWS: I take it that you are willing to have included as part of your stipulation that the two remaining judges might, in their discretion, request the appointment of a third judge to come into the case with them at whatever point the situation might arise?

I can't know and hope the situation doesn't arise at all, but I take it that counsel will be agreeable? I am not sure that we need ask to a stipulation on that. It will be understood.

Now, may I ask what, in the way of evidence, are counsel planning to introduce here today?

143 Mr. LUND: Yes, Your Honor. The answer and the complaint cover most of the field and the admissions to the answer leave only open, as we see it, for inquiry on the trial of question of fact, the actual question of irreparable injury. On the preliminary injunction we filed an affidavit on that point and we would want to present today the direct testimony supporting the statements and that affidavit.

Judge MATHEWS: For instance, in your complaint, beginning with paragraph 2, second sentence of paragraph 2 is denied in the answer. That is the sentence that says plaintiff's plants at Tucson and Glendale have been and are now engaged in the production, modification and overhaul of aircraft equipment under contracts entered into prior to the enactment of the Defense Production Act of 1950. That allegation is denied and then in the various other parts of denials of different paragraphs on the original complaint, part would be denied and a part admitted.

Then there is an amendment to the complaint which contains several pages and there is a supplemental complaint and the stipulation with regard to filing the amendment and the supplemental complaint says that all these allegations are deemed denied. Some of those are factual allegations?

Mr. LUND: That is correct, Your Honor. The factual allegations in that amendment to the complaint cover the issue of irreparable damage which is denied and which we are prepared to pre-

144 sent proof on.

Judge MATHEWS: How long is it going to take to present this testimony?

Mr. LUND: We have a number of—probably depending upon the ease with which we can present the evidence. I anticipate, if we do not run into too many objections, we can possibly conclude by noon.

Judge MATHEWS: I had in mind, if it is a long, drawn out taking of testimony, that we might follow the procedure which is often followed in these Three Judge Cases, as you probably know.

Mr. LUND: No, Your Honor, this is my first experience.

Judge MATHEWS: When a Three Judge Court is confronted with the taking of a large amount of testimony, it is quite common practice for that court to name one of the judges as a master and the other two judges' time could be devoted to something else until the testimony is all in and then with the testimony before it, the three judges can reassemble, hear the testimony and argument. That is

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a time-saving method adopted in a good many cases. I have been in some cases where the testimony was short, only taking a short time and the court heard the testimony. Apparently you have that in mind today.

Mr. LUND: We think we can conclude today.

Judge MATHEWS: You may proceed.

Mr. LUND: Your Honor, at the outset, I believe counsel
145 for the defendants and ourselves would like to present a stipulation. I don't think it is required under the law, but I believe the court would take judicial notice of the orders of the Economic Stabilization Administrator, the enforcement commissioner and so on, but we provide, out of an abundance of caution, that the parties will stipulate that the court may take judicial notice of various orders of the Economic Stabilization agency and subagencies. I have available for the convenience of the court three copies of the various orders and regulations, photostated from the Federal Register, which are pertinent. They are not all pertinent regulations, but certainly some of the most important ones, and Mr. Groner may have some others he has to present to the court for their convenience.

I would think these would not be put in evidence as exhibits under our stipulation. We can do whichever way court or counsel cares.

Judge MATHEWS: I think you might do it either way with the stipulation, although perhaps it is unnecessary. We may take judicial notice. It probably isn't necessary to offer them as exhibits, but would do no injury that I could see.

Mr. LUND: I want to get into the record what the documents are. We will have additional copies so each member will have them.

May we have that stipulation, Mr. Groner, that the court will
146 take judicial notice of the various orders and regulations?

Judge MATHEWS: I hope that what you do will leave us in such a position we don't have to search through the Federal Register.

Mr. LUND: That was what we are trying to avoid—have it all before you.

I just want to enter into a general stipulation that the court may take judicial notice.

Mr. GRONER: Yes.

OFFERS IN EVIDENCE

The CLERK: Plaintiff's Exhibit A for identification only.

(Whereupon copies of orders referred to above were marked Plaintiff's Exhibit A for identification only.)

Mr. LUND: They are all the same; three copies of the same. If I may have that, I will identify it in the record.

Plaintiff's Exhibit A, Your Honor, is a photostat from the Federal Register of various regulations. I will just call them off. General

Wage Stabilization Regulation No. 1; General Order No. 15; General Order No. 15, Amendment 1; General Order No. 18, Amendment 1; General Order No. 18 and General Order No. 16, General Order No. 19, General Procedural Regulation 1, Revised; General Procedural Regulation 1, Revised, Amendment 1 and Executive Order 10434.

We offer those in evidence, Your Honor.

Judge MATHEWS: No objection?

Mr. COLLETT: No objection.

147 Judge MATHEWS: They are received.

The CLERK: Plaintiff's Exhibit A in evidence.

(Whereupon Plaintiff's Exhibit A, heretofore marked for identification only, admitted into evidence.)

Mr. LUND: May this be marked B for identification?

The CLERK: Plaintiff's Exhibit B for identification only.

Mr. LUND: At this point, Your Honor, I believe we might stipulate that Plaintiff's Exhibit B is a document presented to us as counsel for the plaintiff herein and to the enforcement commissioner in the pending administrative case which was admitted by the pleadings, presented by the Regional Counsel of the Wage Stabilization Board, as the computation made by Regional Counsel of the Wage Stabilization Board of the amounts of the alleged violations of stabilization involved, not pending in the administrative enforcement case.

Will you so stipulate, Mr. Groner?

Mr. GRONER: As I understand, we are stipulating just as to what the document is, not of course as to its relevancy or any other characteristic of it?

Mr. LUND: That is correct; the presentation by your office, your claims as to what the alleged violations amounted to.

May that document be received in evidence, Your Honor?

Judge MATHEWS: Is there any objection to its being re-

148 ceived in evidence?

Mr. GRONER: I do not see its relevancy to this proceeding, Your Honor. I would like, at the outset, to state a general objection which I am going to raise. I don't know at what point I ought to raise it. I'd like the courts' guidance. It seems to us—it seems to the defendants that the primary issue now is essentially a legal one as far as we are concerned. Our position is that if we have legal authority to proceed with this hearing, that is to say, if there is no constitutional bar and there is no bar in the statute, then we have full legal authority to go ahead and whatever——

Judge MATHEWS: Are you making any objection to this document that has been offered in evidence?

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Mr. Groner: Yes, and I therefore would object to this document as irrelevant to the primary purpose at hand, namely, that whatever the figures are with respect to the alleged violations, they are of no significance to this proceeding.

Judge GOODMAN: May they not have something to do with the issue of damage?

Mr. GRONER: As we see the case, Your Honors, whatever—if by "damage"—I don't know what you mean by damage.

Judge GOODMAN: I mean on the issue of irreparable damage, that the amount involved has some pertinency to the allegation as to irreparable damage. If 25 cents was involved, we'd be wast-
149 ing our time. If the amount involved was such that it would have some relationship to the claim of irreparable damage, then it might be pertinent.

Mr. GRONER: I believe, Your Honors, the entire claim of irreparable damage is irrelevant and I proceed to object to that line of questioning. A preliminary injunction has been granted and is outstanding. The preliminary injunction was granted in part because there was irreparable damage, but I would assume fundamentally, because of the grave and serious issues of law, I would assume that this trial is the appropriate forum for the resolution of that issue.

Our position furthermore is that if we have the constitutional and statutory authority to proceed, then the amount of money involved, whether it is 35 cents or thirty-five million is irrelevant, because Congress has authorized us to go ahead.

Judge GOODMAN: Isn't that wrapped up in the main question that we decided? It is rather a technical question, isn't it? We could reserve ruling on the admission of this document, but we might as well have the whole record before us.

Judge MATHEWS: I would think you might perhaps make a general objection that you wouldn't have to repeat any more. Then, whenever you thought proper, you could simply say "Objected to on the same grounds," because we don't have a jury here and
150 it isn't very important whether we admit or reject a piece of irrelevant testimony, some testimony which turns out to be irrelevant. When you are trying a case to the court, whether it be one judge or three, it isn't terribly important if the court receives some irrelevant testimony, something that turns out to be immaterial and so you aren't particularly hurt. It is very well to make objections if for no other reason than to save the time of the court and counsel. Unless a piece of testimony or exhibit is obviously inadmissible, it would probably save time for us to admit always subject to your objection. If it turns out, in our opinion, to be irrelevant and immaterial, we won't consider it; otherwise we will and so it seems to me we don't really need to hear more than just the objection. I am pointing out we wouldn't need to have all these

objections argued, that you need not greatly be concerned about the admission of testimony, that you perhaps wouldn't want a jury to see at all if this were a jury case. This isn't a jury case, so we might shorten the case a great deal by having the objections stated briefly and not make an argument on the objection.

Mr. GRONER: I wasn't attempting to make an argument, Your Honors, I was just trying to state my objection.

I have one other objection to this document.

Judge MATHEWS: You have an objection to it on the grounds of irrelevancy and immateriality?

151 Mr. GRONER: May I take a sentence or two in addition? Namely, it does not go to the damage, Your Honors. It is irrelevant. It merely indicates the view as to one of the facts which the prosecution may take in this hearing. It doesn't even indicate the position it will take. It certainly has no value whatsoever to indicate what the outcome of the hearing may be, because no——

Mr. LUND: Will counsel enter into a stipulation concerning the exhibit? I wanted to avoid taking the stand to identify the documents.

Judge MATHEWS: It is admitted.

The CLERK: Plaintiff's Exhibit B in evidence.

(Whereupon Computation by Regional Counsel of the Wage Stabilization Board was marked Plaintiff's Exhibit B and admitted into evidence.)

Mr. LUND: I would also present, Mr. Groner, that we stipulate at this time, if this matter goes to a hearing before the enforcement commissioner that the estimated time of trial before the enforcement commissioner is two and a half to three weeks. Will you so stipulate?

Mr. GRONER: We will so stipulate.

Judge MATHEWS: Very well.

Mr. LUND: I will call Mr. Denny.

152 ROBERT O. DENNY called as a witness on behalf of the plaintiff, sworn.

The CLERK: Will you please state your name, address and occupation to the court?

The WITNESS: Robert O. Denny, 10690 Somma Way, Los Angeles, California.

DIRECT EXAMINATION.

Mr. LUND:

Q. What is your business address, Mr. Denny?

A. 1310 Airway, Glendale, California.

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Q. With what company are you employed?
A. Grand Central Aircraft Company.
Q. And your position with Grand Central Aircraft Company?
A. President.
Q. How long have you held that position?
A. Since 1950.

Mr. LUND: As a matter of guidance, Your Honors, we have a number of original exhibits to produce and we would want to, in each case, with the court and counsel's permission, substitute authenticated copies. It might be simpler if we merely identify the authenticated copy and show the original to Mr. Groner instead of identifying the original and substitute a copy, if that is agreeable to everybody.

Mr. COLLETT: If the Court please, in the interest of, I think, a good deal of time, counsel has a large number of documents which has not been disclosed. We have to sit here and try to look
153 at them. It might be wise to get them together and pass them over so we can take a look at them.

Judge MATHEWS: Still wiser, all this should have been done before we met here this morning.

Mr. LUND: Yes, Your Honor. We did not have a pre-hearing conference or trial in this case, which would have simplified and made all these exhibits stipulated to. When the matter was set for trial, there was no provision made for that.

This matter was controlled from Washington. If we ask the local attorney to stipulate, he would have to confer with Washington and that takes considerable time. It didn't appear to be very practical to try to work it out. I might suggest if we had a 15 minute recess, counsel might stipulate to a lot of them to avoid the Court's and the clerk's and everyone's time.

Judge GOODMAN: How many documents?

Mr. LUND: Depending upon how many we can stipulate to; probably eight or ten. We have a series of our defense contracts. Perhaps we can cover them by general testimony or by stipulation. If not, of course, we have many more than eight or ten documents.

Judge GOODMAN: I would suggest you examine the witness and have him identify a document and then just have it marked for identification temporarily and then during the recess period,
154 get your stipulation from counsel.

Mr. LUND: Do I understand the Court prefers to identify the documents through the witness before even having it marked for identification?

Judge GOODMAN: You can mark it for identification. You will have to do that. As far as its admission is concerned, you can refer to it until counsel looks at it.

The CLERK: Plaintiff's Exhibit C for identification only.

(Whereupon copy of credit agreement was marked Plaintiff's Exhibit C for identification only.)

155 Mr. LUND:

Q. Mr. Denny, I show you a document headed "Grand Central Aircraft Company, credit agreement, August 24th, 1951," identified as Plaintiff's Exhibit C, and will you tell us please what that document is, just briefly?

A. This is the document that shows the credit agreement between Grand Central Aircraft Company and three participating banks and loans which we have obtained to help finance our company; working capital and so on.

Q. This agreement was entered into, on or about that date, August 24th, 1951?

A. That is correct.

Q. This copy is authenticated the same as the original with the signatures and all the original entries?

A. That's correct.

The CLERK: Plaintiff's Exhibit D for identification only.

(Whereupon document was marked as Plaintiff's Exhibit D for Identification.)

Mr. LUND:

Q. I show you Plaintiff's Exhibit D, a document headed "Eighth Amendment, Grand Central Aircraft Company, Credit Agreement, dated August 24th, 1951", and ask you just briefly to identify that document.

A. This embodies a series of eight amendments which have been made to the original credit agreement and it is, by signatures which I can recognize, a copy of the original.

156 Q. Plaintiff's Exhibit C is the original credit agreement, amended from time to time through a series of seven amendments, is that correct?

A. That is correct.

Q. Then you came up to the Eighth Amendment, the document you identified, did that incorporate all the prior amendments?

A. That is right.

Q. Then plaintiff's Exhibit D then brings the applications for credit up to date, is that correct?

A. That's correct.

Q. Mr. Denny, will you tell us—describe briefly for us the work performed by Grand Central Aircraft Company; the nature of the work?

A. The primary work we performed is overhaul and modification of aircraft and aircraft engines.

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Q. How long has the company been in business?

A. Since 1929.

Q. At what location?

A. Well, at Glendale, California, i 1929, which the general offices are still in Glendale at the same location.

Q. What development or expansion took place about 1950?

A. We opened a new plant in Tucson, Arizona, on June—the latter part of June, 1950.

Q. Prior to that time, approximately how many employees did you have in your Glendale plant?

157 A. Normally, it varies—normally averaged about three to four hundred.

Q. And at the Tucson plant after it opened, how large did it grow?

A. It finally got to approximately 4500 employees.

Q. What type of aircraft has your company been working on, both in Glendale and at Tucson?

A. C-47's, F-51's, B-29's, Boeing B-47's.

Q. This is all under contract for the Air Force?

A. Those particular planes that I mentioned were all contracted from the United States Air Force.

Q. Has the work of the company in the last three years been limited to Air Force work?

A. By and large most of the work for the Air Force. However, we have done and still are doing some work for commercial customers such as the airlines and private owners.

Q. The work for the Air Force involves, as I understood your testimony, mainly modification of various aircraft?

A. That is correct, modification, reconditioning, overhauling.

Q. Are you presently operating under Air Force contracts?

A. Yes, sir.

Q. Do you have any non-Air Force contracts?

A. Yes, sir.

Q. Will you tell us in a general way what percentage or

158 proportion of your business now is with the Air Force?

A. I suspect about 75 per cent of our work is Air Force work.

Mr. Lund: At this point, Your Honors, we do have the various Air Force contracts and I for one feel it should not be necessary to get into the contracts themselves. I don't know that Mr. Groner's office is going to dispute the facts that we are operating on these defense contracts and have been for some time. Perhaps you don't propose to question that aspect even though it was denied in the answer that the company has been engaged in this Air Force work. Then I won't need to go into the voluminous details of the agreements.

Mr. GRONER: I'm not sure—do you mean——

Mr. LUND: In your answer you denied we were doing repairing and overhauling, and modification work for the United States Government, ever since 1950 and so on.

Mr. GRONER: I think what we said was we lacked the information to know whether that was so or not. I don't want to make a big issue out of it. I am perfectly willing to stipulate that that's the general field that they are in, if that would be sufficient.

Mr. LUND: All right.

Mr. LUND:

Q. Mr. Denny, as of September of 1950, you were operating, I take it, under Air Force contracts which were made prior
159 thereto?

A. That's correct.

Q. Do you recall whether or not any of those pre-September 1950 Air Force contracts are still in effect?

A. I don't know.

Q. Under your contracts with the Air Force, for the most part, is there a specified schedule of production to be performed by your firm?

A. Yes, sir.

Mr. LUND: I believe, Your Honors, I would like to introduce at least one of our Air Force contracts as a sample.

Judge MATHEWS: Any objection?

Mr. GRONER: No objection.

Judge MATHEWS: Admitted.

The CLERK: Plaintiff's Exhibit E in evidence.

(Whereupon Air Force contract was admitted in evidence and marked as Plaintiff's Exhibit E.)

Mr. LUND:

Q. Mr. Denny, I show you plaintiff's Exhibit E, a document headed "Defense Negotiations, Contract," numbers which are long, ending "26619" and ask you if that is a typical Air Force contract about which you have been testifying that your company has entered into in the last few years?

A. Yes, sir.

160 Q. In the event the production schedule prescribed in such a contract is not met by your Company on time and assuming the delay is not caused by failure on the Government's part to furnish you the planes or whatever their commitments are, what position does that put your company in under such a contract?

A. We'd be in the position of possible default of performance on

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our part and the Government, of course, could very well terminate the contract and cancel it out.

Q. And if that were done, if the contract was cancelled out for some such default on your part, what would be your obligation with reference to the working process and so on?

A. Well, the Government might very well take the position that it was no fault of theirs, we were unable to perform probably, and therefore any additional costs which the Government would be forced to pay the company, very probably they would bill us and make us pay the necessary costs of moving the working process and inventories and so on into another contractor's plant.

Q. What, if you can give us some reasonable estimate, would be the actual cost of moving from your Tucson plant, the unfinished Government work you have there, assuming that the contracts are cancelled and the planes are to be moved from that plant to some other location, say the Boeing Plant. What is the approxi-
161 mate cost of just making that move of the unfinished planes?

A. If it were terminated because of the contract default, no fault on the part of the Government, I would suspect it would be a minimum of $4,000,000, the cost of moving those partially completed airplanes that could not fly, moving them out.

Mr. LUND: May I have this marked for Identification?

The CLERK: Plaintiff's Exhibit F for Identification only.

(Whereupon document was marked as Plaintiff's Exhibit F for Identification only.)

Mr. LUND: May I have that marked "G" too? I think I'll interrogate him about that first.

The CLERK: Plaintiff's Exhibit G for Identification only.

(Whereupon document was marked as Plaintiff's Exhibit G for Identification only)

Mr. LUND: Mr. Denny, under your credit agreement with the banks, you are required to make regular financial reports to the banks or to the Farmers and Merchants, as agents for these three banks?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit G and ask you if this is not the most recent financial statement prepared by your company to the banks and for the banks in connection with that credit
162 agreement?

A. Yes, sir, that is the latest financial report.

Q. Other than the various supporting documents and exhibits?

A. Yes.

Q. Now, at our request, did you have prepared a schedule show-

ing the available cash in your organization between June 21st and July 19th, 1953?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit F for Identification and ask you if that is the schedule prepared by your Treasurer?

A. Yes, sir, that is the schedule.

Q. That schedule does show from week to week over that period the amount of cash your organization had on hand?

A. Yes.

Mr. LUND: We offer the documents in evidence, Your Honors.

Judge MATHEWS: Admitted.

The CLERK: Plaintiff's Exhibits F and G in evidence.

(Whereupon Plaintiff's Exhibits F and G, formerly marked for identification only, were admitted in evidence and marked Plaintiff's Exhibits F and G in evidence, respectively.)

Mr. LUND:

Q. Will you explain briefly the procedures involved in the company obtaining loans under this credit agreement?

A. Well, there is an account called "Grand Central Aircraft
163 Company collateral account" and we can borrow money from the banks on a note and would have hypotheticated various Government contracts and the checks as they come in from the Government, go to the bank and are placed in this collateral account. We can then draw money of the collateral account, if sufficient funds are in this particular account, or we can get additional funds by signing a new note and we do this on a weekly basis. Each week we notify the bank how much money we will need to operate and we get as much as we can out of this collateral account, which is money coming in from the Government on previously rendered invoices, and if that fund is not ample, then we sign a new note and increase the amount of the borrowing.

Q. Under the original credit agreement that sets up the specification of the maximum amount the banks will make available for your weekly borrowings? Is that correct? Under the original credit agreement, you don't borrow four and a half million dollars, whatever specified, they make that credit available to you?

A. Yes, under the original credit agreement we have a line of credit of $6,000,000. We withdrew or used that amount credit as necessary. No, we do not take the entire $6,000,000 at one time; merely draw against it as we needed it.

Q. That is true at the present time; you draw each week
164 against the credit that you have with the banks under that agreement, is that correct?

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A. That is correct.

Q. And this schedule that you have just introduced, Plaintiff's Exhibit F, that indicates, does it not, the amounts borrowed from the bank, each of these weekly periods and that is the credit agreement you have been testifying about, is that correct?

A. That is correct.

Q. What other source of working capital, if any, does Grand Central Aircraft Company have for its operation other than the weekly bank loans?

A. That is the only source available to our knowledge.

Q. As I understand, the Air Force contracts at least, the rights to receive payments under the Air Force contracts, are assigned to the bank as collateral in support of their credits they have advanced to you?

A. Yes, sir.

Q. And the payments are made right by the Government to the banks?

A. Yes, sir.

Q. And deposited in this collateral account?

A. Yes, sir.

Q. What was the balance in that collateral account with the banks as of yesterday?

165 A. Approximately $70,000.

Q. What would happen, Major Denny, if tomorrow you applied or today your company applied for regular weekly advances from the banks and it was refused? What would that do to your operation?

A. Well, according to our contract schedule, I believe we have approximately $580,000 cash on hand as of today. If we were told we couldn't borrow additional funds through the credit agreement with the banks, we then would be unable to continue to operate for lack of working capital, which means that we would automatically have to terminate all of our employees. As of today we owe them two weeks' payroll, which is approximately a quarter of a million dollars a week. That means we would owe our employees half a million dollars as of today. If we terminated it would take practically all the cash we have to pay the employees upon their termination. We would then have to notify the Government that we were unable to continue and default on all of our contracts.

Q. I notice that credit agreement as amended by the terms, expires on September 30th, 1953. Your company will make efforts to have that agreement further extended?

A. Yes, sir.

Q. That September 30th, 1953 date is in itself an extended date, is it not? The original term did not run that far?

A. Yes, sir.

166 Q. What would happen, Major Denny, if the banks refused to extend this credit agreement? What effect would that have on your operation?

A. Well, for lack of working capital, we would be unable to continue performance under our various Government contracts and would have to cease and notify the Government that we're in default.

Q. Major Denny, I direct your attention to Plaintiff's Exhibit G, a financial statement that you have identified and the reference in this series of schedules to the earnings of the company during the first few months of 1953, net profit for the period, and ask you if that is based upon the cost determination—pardon me.

I ask you if that figure is based upon the existing situation so far as the reimbursement by the Government is concerned under your contracts, and if it fails to take into account possible disallowance by the Government of reimbursement of items under your present Air Force contracts?

A. Yes, the Government figure that is shown in this particular schedule is what we believe to be realistic and based on the fact that we believe that we will obtain reimbursement for all our costs that go into making up this figure.

Q. But it is possible on the basis of your experience that the Government would not reimburse you to cover all these
167 amounts?

A. That is very possible.

Q. That is on an accrual basis; it is not based on the actual cash received from the Government?

A. That is correct, and it is quite possible this figure would be lowered somewhat.

Q. For the period of 1951, did the Government reimburse your company for all of the expenses that you made claim for reimbursement on?

A. No, sir.

Q. What is the figure that the expenses actually paid by the company, for which the Government refused to make reimbursement?

A. $548,000.

Mr. LUND: Do you want to make these please?

The CLERK: Plaintiff's Exhibit H for Identification only.

Mr. LUND: Your Honors, and Mr. Groner, Plaintiff's Exhibit H for Identification is the company's original and only copy of its 1951 corporate income tax return. I'd like to enter into a stipulation if we may, we may have a photostat made of this document and substitute it in lieu of the original and withdraw the original, if that is satisfactory to the Court and counsel.

Mr. GRONER: No objection.

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168 (Whereupon 1951 income tax return was marked as Plaintiff's Exhibit H for Idenitfication only.)

Mr. LUND:

Q. I show you United States Corporate Income Tax Return Form 1120 for the year 1951, bearing the Grand Central Aircraft Company, and identified as Plaintiff's Exhibit H for Identification and ask you if that is not your company's own copy of its 1951 corporate federal Income tax return.

A. Yes, sir.

Mr. LUND: We offer it in evidence, Your Honors.

Judge MATHEWS: Admitted.

The CLERK: Plaintiff's Exhibit H, now in evidence.

(Whereupon Plaintiff's Exhibit H, previously marked for identification only, received in evidence and marked Plaintiff's Exhibit H.)

The CLERK: Plaintiff's Exhibit I for Identification only.

(Whereupon document was marked Plaintiff's Exhibit I for Identification.)

Mr. LUND: Mr. Denny, at our request, did you have the Treasurer of your company recompute your 1951 Federal income tax on the basis of the disallowance by the Air Force of this $548,000 figure on reimbursement?

A. Yes, sir.

169 Q. I show you Plaintiff's Exhibit I and ask you if that is the recomputation of your 1951 income tax, after disallowance by the Government of that $548,000?

A. Yes.

Q. And based thereon, the net income of the company before taxes would be $75,000, is that correct, for the year 1951?

A. Yes, sir.

Mr. LUND: We offer it in evidence.

Judge MATHEWS: Admitted.

The CLERK: Plaintiff's Exhibit I in evidence.

(Whereupon Plaintiff's Exhibit I previously marked for Identification only, was admitted as Plaintiff's Exhibit I in evidence.)

The CLERK: Plaintiff's Exhibit J for identification only.

(Whereupon document was marked as Plaintiff's Exhibit J for Identification only.)

Mr. LUND:

Q. Now, at our request, Mr. Denny, did you have your Treasurer compute what your 1951 income tax liability would be if the $548,000 Air Force disallowance were taken into account and if there was taken into account the $5,000,000, plus disallowance for wage stabilization alleged violations?

A. Yes, sir.

Q. I show you plaintiff's exhibit J and ask you if that is the computation you made, taking into account the claim of
170 the Wage Stabilization violation, involving the disallowance, potential disallowance of some $5,000,000 and the Air Force $500,000——

Mr. GRONER: I want to object to these hypothetical and remote —we object to that amount and raise that objection to practically all of these questions, just so we have it on the record.

Judge MATHEWS: You may answer.

The WITNESS: Yes, sir.

Mr. LUND: We offer it as Plaintiff's Exhibit J in evidence.

Judge MATHEWS: Admitted.

Judge GOODMAN: I am not sure about that $548,000.

Mr. LUND: Thank you, Your Honor.

Mr. LUND:

Q. I take it the Air Force audits your claimed expenses for which you seek reimbursement, from time to time?

A. Yes, sir.

Q. It is rather a complete and full audit?

A. Yes.

Q. Will you explain just briefly what that $548,000 item constitutes?

A. The $548,000, sir, is money that the company has actually spent in operating its business, but the Air Force audit people take
the position that the money was spent for things of which
171 they have no responsibility of liability and therefore, they will not reimburse. Even though we have paid the money out, they in turn take the position that they are not going to reimburse us and it was disallowed.

Judge GOODMAN: Your 1951 income tax return was filed then before this $548,000 was disallowed, is that it?

Mr. LUND: That is correct

Judge GOODMAN: The 1951 return was filed on an accrual basis rather than a cash basis?

Mr. LUND: That is correct, it so shows.

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Mr. LUND:

Q. Actually the $548,000 figure is not final yet? Is not that still under consideration?

The WITNESS: Yes, sir, it is still under consideration. As a matter of fact, it started out at about $1,000,000, it is now down to about $548,000 and we are discussing with the Air Force a reduction on that.

Q. How much of $548,000 is still in dispute?
A. Approximately $100,000.
Q. You are still seeking to get reimbursement on that $100,000?
A. That is correct.

Mr. GRONER: This disallowance has nothing to do with the proposed disallowances at bar. I want the record to show that any references, in our judgment, is beside the point and offers no addition to the evidence in the case. I don't want to keep objecting,
172 but the questions are becoming, it seems to me, more and more remote from the subject matter at hand.

Judge MATHEWS: You won't be hurt. The only harm will be, we have wasted that much time.

Mr. LUND:

Q. Give us the type of expenses the company has incurred which the Government has refused to reimburse you?

A. I think one good illustration would be the legal fees, for example, in this particular Wage Stablization Board situation that they have disallowed.

The CLERK: Plaintiff's Exhibit J in evidence.

(Computation sheet previously marked as Plaintiff's Exhibit J for Identification, was thereupon admitted in evidence and marked Plaintiff's Exhibit J.)

Mr. LUND: Could you give us another illustration?

A. Certain types of advertising costs were disallowed.
173 Q. Were the travel expenses disallowed?
A. Yes, travel expenses. Traveling, for example, in connection with this particular case would be disallowed—have been disallowed.

Mr. LUND: We offer, Your Honors, Plaintiff's Exhibits C and D in evidence. We just identified those previously. That is the credit agreement and the extension.

That is all, Your Honors, with this witness.

I beg your pardon. I didn't ask for a ruling on the admission of Exhibits C and D.

Judge MATHEWS: C and D have been offered in evidence?

Mr. LUND: Yes, Your Honor.

Judge MATHEWS: They may be admitted.

The CLERK: Plaintiff's Exhibits C and D in evidence.

(Whereupon Plaintiff's Exhibits C and D, heretofore marked for identification only, admitted into evidence.)

Mr. LUND: We are through, Mr. Groner.

Mr. GRONER: We don't have very many questions. I wonder if we could reserve the right after we have studied these documents to recall this witness? I do want to reserve that right.

Judge MATHEWS: Do you have other testimony you wish to proceed with?

Mr. LUND: We have another witness, Your Honor.

Mr. GRONER: I just have one question to ask. I would like
174 to reserve the right to ask further questions if it should be necessary later of this witness.

Judge MATHEWS: No objection to that.

CROSS-EXAMINATION.

Mr. GRONER:

Q. What is—I guess this is Exhibit D. This is your most recent extension of your loan? I wondered when that was and what the dates of the previous extensions were. Maybe I don't understand what this document is. I have something here called Eighth Amendment. I take it—I may be wrong—that one of the amendments extends until September, 1953, is that correct?

A. I'd almost have to look at the document to refresh my memory.

Q. Let me get at this way: The original credit agreement of August 24th, 1951, what was the terminal date on that?

A. It was sometime prior to April 30th—I mean, September 30th, 1953. I don't remember exactly what was the termination.

Q. Was it in 1951, 1952 or 1953? Do you recall it even that well?

A. I think it ran for approximately a year.

Q. Roughly in August of 1952 and then there is an additional extension presumably for—how long was that?

A. I don't recall.

Q. There has been an extension of this loan since the time
175 when the Wage Stabilization Board brought the complaint in the administrative proceedings, has there not?

A. I believe so.

Q. And has there been more than one?

A. Not to my knowledge.

Q. Has there been more than one extension since the time that the investigations were held in your plant by our agency?

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A. I don't believe so.

Q. One other question. Have you ever officially notified the bank or any of the banks involved of dependency of the Wage Stabilization enforcement proceeding of this lawsuit?

A. Yes.

Q. You did that promptly? When did you do that? Could you indicate and how did you do it and what was their reaction? When did you do it?

A. I don't know.

Q. Was it relatively promptly after we filed our complaint? Was it before then or after that? That was November, 1952. Was it before that or after that?

A. Well, I don't know quite what you mean by formerly notified.

Q. If that is unclear, have they known—in your judgment, have they known of this Wage Stabilization Board proceeding fully and completely? Have they been fully advised by you since the
176 beginning of this administrative enforcement proceeding?

A. Yes, sir.

Mr. GRONER: I think that's all.

Judge MATHEWS: You may wish to cross-examine further at a later time?

Mr. GRONER: Yes, sir.

Mr. LUND: That is all of this witness. In the light of these questions, I would like to proceed again to avoid getting to the stand myself as a witness. I would like to stipulate that the document, Plaintiff's Exhibit 1, which is the computation, payroll and so on was presented on January 28, 1953, to ourselves as counsel for the plaintiff and that was the first time the Regional Counsel of the Wage Stabilization Board presented any such computation of the——

Mr. GRONER: I don't know to what you are referring. That date of November, I used as the date of the complaint.

Mr. LUND: Which doesn't specify the amounts involved. My point is, we were given the first official statement of the statement of the amounts involved at the time Plaintiff's Exhibit B was presented to us and that date was January 28, 1953. Will you stipulate that the date we received Plaintiff's Exhibit B was January 28, 1953?

Mr. GRONER: Yes, we will stipulate.

May I ask an additional question?

Mr. GRONER:

177 Q. Has there been an extension of the loan since January 28, 1953?

A. I think the extension date was prior to that. I'm not sure.

Q. Did the bank or banks—I haven't studied the documents. Were they fully aware or are they now fully aware of the amounts

involved to the extent that you believe they are the amounts involved? Of course, I haven't conceded they are. Are they aware of the implication you put on the document to which your counsel has just referred?

A. Yes, sir.

Mr. GRONER: One moment, please.

I wonder if the witness could refresh his recollection or in some other way have before the Court the dates of when the loans were extended so that we may have that? I don't think it is in this document.

Judge GOODMAN: Why don't you ask counsel to stipulate to that; give you the figures on it.

Mr. GRONER: It has been brought to my attention that the first paragraph, each of the amendments recites a date of extension—I have no other questions.

Mr. LUND: That is all, Your Honor.

Judge MATHEWS: Your next witness.

OSCAR T. LAWLER, called as a witness on behalf of the plaintiff, sworn.

178 The CLERK: Will you please state your name, address and occupation to the Court?

The WITNESSS Oscar T. Lawler, 216 South Plymouth Boulevard, Los Angeles. I am executive vice-president of the Farmer's & Merchant's National Bank of Los Angeles. That would also be my business address, of course.

DIRECT EXAMINATION.

Mr. LUND:

Q. You are a member of the Board of Directors of the same bank, Mr. Lawler?

A. I am.

Q. Member of this loan committee?

A. Yes.

Q. Your duties and responsibilities as executive vice-president involve the recommendations to your Board of Directors of potential loans or extensions of credit?

A. Yes, sir.

Q. And you do from time to time make an investigation and then make recommendations to your Board as to whether or not they should grant credit?

A. That is generally correct, yes.

Q. Those recommendations of yours are usually and normally followed by the Board of Directors?

A. Generally speaking, yes.

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Q. You are familiar with the credit agreement between the Grand Central Aircraft Company and your bank?

179 A. I am.

Q. And are you, in general, familiar with the financial condition of the Grand Central Aircraft Company?

A. May I add to the first question? The credit agreement between Grand Central Aircraft Company, my bank and two other outstanding financial institutions, namely the California Bank and the Security First National Bank of Los Angeles.

Q. Thank you for calling that to my attention.

In this case the credit agreement and loans are made by the three banks, as I understand; your bank, however, does act as agent for the three banks, including yourself, in the mechanics of handling this loan, is that correct?

A. That's correct.

Q. I don't know that I got an answer to my question about whether you were also familiar with the financial condition of the Grand Central Aircraft Company?

A. Yes, sir.

Q. You, at our request, I believe, familiarized yourself somewhat with the procedures involved before the National Enforcement Commission and the potential penalties involved in such a proceeding.

A. I read over the general order.

Q. 15?

A. General Order 15.

Q. Procedural regulations?

180 A. Procedural regulations, yes, sir.

Q. Mr. Lawler, if an enforcement commissioner of the National Enforcement Commission in a proceeding involving the Grant Central Aircraft Company should make findings and determinations that wages in the amount of $5,000,000 or more should be disallowed for income tax and or an alternatively contract reimbursement purposes for the year 1951, what would be your recommendation to the Board of Directors of your bank with reference to the requests from Grand Central Aircraft Company to extend the present credit agreement beyond September 30, 1953?

Mr. GRONER: I renew my objection to these questions on the grounds they are hypothetical.

Judge MATHEWS: Your objection is to the grounds they are hypothetical and that the information asked for is irrelevant and immaterial?

Mr. GRONER: Yes, particularly this question, that it is hypothetical.

Judge MATHEWS: We will consider the objection has been made and repeated and the testimony will be received subject to the objection.

The WITNESS: Would you mind then giving me that question again, sir?

Mr. LUND: Will you read the question, Mr. Reporter.

(Question read by the reporter.)

181 The WITNESS: Under those circumstances, sir, I would give a negative recommendation to my Board of Directors with respect to the further extension of cerdit.

Mr. LUND:

Q. By saying "negative" you mean you would recommend that the bank not extend the credit agreement, is that correct?

A. That is correct.

Q. Would that also be true if the enforcement commissioner's findings and determinations was that the amount of such disallowance should be $3,000,000?

A. In my opinion, the recommendation should continue to be negative under those circumstances based on the financial condition of the company as I know it at this time.

Q. And would the same be true if the findings and determinations of the enforcement commissioner was for a disallowance of a million dollars?

A. Yes.

Q. Three-quarters of a million dollars?

A. Yes, sir.

Q. I take it your answers would be the same, instead of findings and determinations by the enforcement commissioner of the National Enforcement Commission, the findings and determinations were by the National Enforcement Commission itself?

A. By the National Enforcement Commission itself, the
182 commissioner—is that the point of your question?

Q. What is your answer relative to recommendation to extending the credit agreement—would it be the same if the findings and determinations concerning the disallowance were made by the National Enforcement in Washington?

A. My answer would be the same.

Mr. LUND: That's all. Did you appear in court today pursuant to a subpoena?

The WITNESS: I did.

Mr. LUND: No further questions.

Judge MATHEWS: Cross-examination?

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CROSS-EXAMINATION.

Mr. GRONER:

Q. The answers you have given related to extensions. I take it you are referring to the date of September 30th, 1953?

A. As the question was asked, sir, that was my understanding. My thinking doesn't necessarily confine itself to that particular set of circumstances.

Q. Your answers to the questions related to whether you would recommend an extension beyond September 30th, 1953?

A. Correct.

Q. You were not asked and you did not answer any questions which suggested in any way that we could possibly damage this company before that date? Now, there is another question I would like to ask. You said——

183 A. (Interposing) Was that last time that you're asking me, sir?

Q. I have an additional question. Mr. Lund said you examined the documents at counsel's request. Is it correct then that you didn't take this matter seriously enough from the viewpoint of the bank and the N. E. C. regulations and the possibility of appeal and what they would mean?

A. Obviously I can't answer that question. It involves an inference there. Would you mind repeating it?

Q. Is it true that you examined the documents, the regulations, General Order 15 and so on involved in this case only at the request of counsel?

A. I examined them when they were presented to me for examination by counsel.

Q. When did you first hear about the possibility that there might be some involvement by this firm in enforcement proceedings by the Wage and/or Salary Boards?

A. We were informed sometime ago that proceedings of this nature were in process.

Q. Which proceedings?

A. I haven't familiarized myself with the details of this proceeding.

Q. About how long ago? A year? Two years?

A. The precise date that this first came to our attention, I wouldn't be able to testify as to the precise date it came to

184 me by word of mouth. We were advised under the terms of the credit agreement. We must have been advised and the company carried out that duty of advising us that these proceedings were under way. May I elaborate further?

The company is subject to annual audit by a certified public accountant and the certified public accountant made note of the fact

in their annual audit that these proceedings were under way. I am not acquainted with the details, the A. B. C.'s of this thing as it has progressed from day to day.

Q. Are you acquainted with the details of when you were informed and of what you were informed? Could you find out? If you can't answer, can you refresh your recollection in some way? When did you first find out that this company was involved in some way in these enforcement proceedings?

A. Well, the word of mouth information came to us sometime during '52, I believe, and also from the company formerly advising us of this fact on one occasion in the latter part of 1952 and as I recall, again in the early part of 1953 and then the Price-Waterhouse certified public audit made the year end, 1952, that report was available by the early part of 1953 and, it was made. I might, at this point, say that Price-Waterhouse did not, in their comment, give the details that were involved in this proceeding.

Q. The information that came to you was exclusively in the nature of the regular reports required? They were solicited by you,
185 is that correct?

A. What are you referring to there?

Q. In other words, information as to this enforcement proceeding. Did you go out and ask for it or were you content with the regular reports, the annual audit or the formal reports made by the company at whatever time in 1925 it was made or did you make further inquiries? Is my question clear?

A. Generally, yes. The credit agreement provided that the company advise the banks of material adverse claims pending against them and so far as I know, the company did carry out that provision of the credit agreement.

Now, naturally, we hear things, certainly. As I recall it, an article appeared in the newspaper in Los Angeles sometime in June of this year, I believe, and naturally we made inquiry as to how this matter was progressing.

Q. Can we find out—I guess I have asked this a couple of times. Can we find out when was the first time you were informed by the company of this proceeding, what that notification was and how often it was repeated? Do you have that ? Can you get it?

A. I can get it for you, the letter that the company wrote. I can get for you the audit report of Price-Waterhouse. Perhaps I don't understand exactly why it is necessary to have this precise date.

It is obtainable other than hearsay which would be based on
186 recollection. If it has to do with the coincidence with the extensions of the credit agreement, I think I might, if you question a little further, perhaps I could be more helpful.

Q. As I understand it, if I construe these dates correctly, the last extension was dated December 19, 1952?

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A. That is the date of the so-called Eighth Amendment, I believe.

Q. Yes, that is correct. At that time did you get notification from the company as to dependency of this?

A. I believe we were advised prior to the date of extension of credit indicated by that, Amendment No. 8.

Q. Do you remember anything about that advice? Did it indicate what was involved?

A. It did not indicate any amounts of money. It indicated in a general way the nature of the proceedings, as I recall, and it also gave as the opinion of the company's counsel and of the officers of the company that at that time this company had sufficient merit in its claim to obviate the establishment of a serious liability.

Q. The preceding—before December 9th, 1952, if I read this correctly, there was one October 30th, 1952. Were you informed at that time that there were enforcement proceedings under way?

A. I would like to check the records on that. If you are trying to infer that——

187 Q. I am trying to get at the information involved in this case. I don't have it. I am soliciting your aid in getting it. I am inferring nothing. I would like to ask whether you asked in connection with the extension of December, 1952, whether you made inquiries as to the amount which might be involved?

A. No, sir.

Q. As the company changed its position with respect to having a good defense in the administrative proceedings, so far as you know?

A. I am not an attorney, sir, I couldn't answer that question.

Q. I am asking you whether you know. You indicated before that it was material to you in deciding whether or not to recommend extension of the loan, that they believed they had a good defense. Now, so far as you know, do they still believe that?

Let me ask it a different way.

A. I cannot testify to what someone else has in their mind.

Q. I am asking you what you have in your mind.

A. You are asking me if I believe that they believe that they have a better defense?

Q. Yes. One generally knows when one believes what another has said, especially where one has testified he did believe and took it into account.

188 A. Counsel, I am not endeavoring to be argumentative.

Q. Whatever you are endeavoring to be, you are evasive. Do you still believe it?

A. Do I believe——

Q. Do you believe that the company is still of the position they have a good defense in the administrative proceeding? You can't answer the question? You don't know whether you believe it or not?

A. I haven't answered the question yet.

Mr. LUND: We object on the grounds it is irrelevant and immaterial.

Judge MATHEWS: The objection is sustained.

Mr. GRONER:

Q. Are you aware that there is provision of appeal from the decision of the enforcement commissioner?

A. A provision for appeal from the decision of the enforcement commissioner? Was that your question?

Q. Yes. Do you know whether or not there is one?

A. Well, it was my understanding from reading the regulations, and, bear in mind, I am not a legal mind, that there is provision for appeal to the commissioner by appeal. What kind of appeal do you mean? To the courts? What kind of an appeal are you referring to, sir?

Q. You were asked the question about what conclusions you would draw from a recommended findings and determinations by an enforcement commissioner. Do you believe that those
189 recommendations and determinations are final?

A. Well, as I read the regulations a determination by the commissioner or by the commission is final, insofar as establishing a liability for disallowance of costs, both for income tax purposes and for reimbursement purposes, under the Government contracts.

Q. Now, that decision of the Enforcement Comissioner, in your judgment, is not final? Action by the National Commission is required?

A. I see what you mean. Yes. That is my understanding of it.

Q. Since action by the Enforcement Commissioner is not final, I wonder if you would explain why a recommendation by the Enforcement Commissioner, assuming it were against the company and the company were willing to appeal—let me ask this:

The answer that you gave as to recommending an extension, would you continue to give those answers on the supposition that the company were taking appeal or would you bear with the company during the pendency of that appeal anyway?

A. That decision is not entirely up to me. If you recall the question that was asked, what my recommendation would be to my bank.

Q. I wish to put it——

A. This credit to this company is within the terms and conditions of the credit agreement as a provision that the working capital of the company shall at all times be maintained at a minimum
190 of $1,000,000.

Now, that is a very important provision from the bank's standpoint. If a liability of sufficient contingency arises, so that there is a hazard beyond the control of the company, of the company being placed in a position where it can no longer comply with the

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provision of the credit agreement, the bank and particularly the agent bank, is placed in a position where it cannot extend credit in accordance with the terms and conditions of the credit agreement.

191 Q. Now, would you answer my question? Would you recommend that the loan be extended if a determination had been made by the enforcement commissioner, but the company was appealing to the National Enforcement Commission and they assured you and you believed them that they had a good case before the National Enforcement Commission?

A. You haven't named an amount involved. I can't answer your question until I know what amounts are in your mind.

Q. Why does the amount make a difference?

A. Obviously, if it is 25 cents, it is going to make a difference to $250,000 or two and a half million. My recommendation, if the amount is 25 cents, is going to entirely different than my recommendation if the amount is two and a half million.

Q. If that's the case, is there any point, short of the actual findings of the enforcement commissioner at which you would feel called upon to change your recommendation to your bank?

A. I am not acquainted with the legal effects of these procedural stages. I naturally have to refer to our legal counsel to be fully advised on that, but I am assuming, as I must assume, as a banker, that a contingent liability of sizeable proportions is being created here and if the proportion of that contingency is such that it is likely

192 to place the company in violation of this provision or make the company incapable of maintaining its working capital position, I would be disinclined to suggest that our bank continue to extend credit.

Q. But that situation hasn't come about as yet.

A. As I understand it, this company is now being protected by an injunction.

Q. What if the injunction were vacated in some way?

A. That would present, in my opinion, a contingency that would require very serious consideration and depending upon the amounts involved, depending upon the review of the matter by our legal counsel, I would be then in a position where I would have to appraise the degree of the contingency and the size and amount and that might give me cause and it certainly would change the position that the company is now in.

As I understand it, I am advised that the company is now protected by an injunction from further pursuit of this action which involves a sizeable sum of money which might very conceivably effect the financial condition of the company in a serious way. That is all a matter of opinion; I'm expressing my opinion.

Q. This concerns whether or not you would recommend an extension of a loan which now goes until September 30th, 1953.

A. That is one phase of it, yes, whether as of September, '53, we are going to have to sit down and decide whether this company is going to be entitled to more credit. Now, there are always day to day situations to be pursued.

193

Mr. GRONER: That is all.

REDIRECT EXAMINATION.

Mr. LUND:

Q. To pursue that, if I may, Your Honors, just a moment, the last question by Mr. Groner, if this Enforcement Commissioner should make his findings and determinations, let's say, the first of next month, August of 1953, and in those findings and determinations, determined that the amount of disallowance say, should be two and a half million dollars and that is called to your attention, would that effect the banks in its weekly extensions of credit that it is making to the company?

A. Well, as I understand it, and here again, it is a matter of opinion, from week to week, as Mr. Denny explained here, I believe the company comes in for loans under its existing credit agreement. It has to comply with the terms and conditions of that existing credit agreement if it is going to be entitled to loans from week to week. That working capital limitation is very much a part and a very important one from the banker's standpoint. If a contingency arises here, contingent liability of sufficient proportions so that this company can no longer say with any justification whatsoever that they are protected from this liability, I suppose it would be like moving a shield or closing an umbrella, if you want to use an example, that presents the banker with the question, are you going to make the loan or are you not under those circumstances?

194

Q. You mean the weekly——

A. The weekly loan; any loan.

Q. Mr. Lawler, speaking of contingency, I assume, looking at it from your view and the banker's view, with reference to possible recommendations to your Board of Directors, the seriousness of this contingency or potential liability is much greater, is it not, after an enforcement commissioner has heard the case and made recommendations for disallowance in the substantial amount than the seriousness of this contingency before such determination adverse to the company.

A. In my opinion, that would be the case. I haven't made an analysis.

Mr. LUND: That is all.

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RECROSS-EXAMINATION.

Mr. GRONER:

Q. He said if the company couldn't make the statement about its working capital. What if the company—if the company made the statement, would you accept it? I didn't get that part of your answer. I understood you to say if the company couldn't say in good faith that it had this amount of capital.

A. Working capital.

Q. Working capital, then you have something serious to
195 consider.

A. Yes, it would be unable to comply with the conditions of lending assets for it in the agreement.

Q. What if the company did make a statement that its working capital was sufficient, based on the legal fact that nothing flows from the findings of the enforcement commissioner, but only from the certification of the NEC? What if the Company would say that it does have this working capital?

A. That it actually did not have it?

Q. No, it would have it; if it believed that it would have it and did have it.

A. It is purely a question of fact whether the company has working capital or whether it hasn't and the statements show it.

Q. In other words, until its statements would show that it did not have the working capital, you would recommend extending the working capital to it?

A. No.

Judge FRIEDMAN: Let me ask this question: Let's assume on August 10th, the National Enforcement Commissioner, after a hearing, finds that this company has got to pay a half million dollars and makes that finding and recommends that to the National Enforcement Commissioner. What would you recommend then; right then at that point?

The WITNESS: I would recommend, if you are speaking as
196 to the renewal of the credit agreement, I would recommend that our bank would not renew the agreement on the present terms and conditions.

Now, naturally, I am going beyond that point. It becomes a salvage operation. We are not going to take injurious action and deliberately endeavor to wipe a company out.

Judge FRIEDMAN: You would try to get out as fast as you could?

A. As reasonably as we could.

Judge FRIEDMAN: If the National Enforcement Commissioner recommends that they pay a half million dollars, recommends that they pay that, but the company says, "Well, we have got a pretty

good ground on which to appeal, but the Commissioner has made the recommendation to pay that money." What is your opinion?

A. You are speaking still of the amount of $500,000 now?

Judge FRIEDMAN: Yes.

A. My opinion would be that we would not extend further credit on the same terms and conditions that is now being extended this company. I admit that it has been continually rather close to what the banks regard as its minimum working capital provision of a million. A recent statement submitted, it had a margin of $270,000 and in excess of that, at January 4, 1953, by certified audits, its margin was only some $50,000 in excess of that, so that you build up contingent liabilities here and you are placing
197 the banker in a position where he has to think pretty hard as to whether he wants to continue to extend credit.

Mr. LUND: We have no further questions.

Mr. GRONER: I have one more question.

Mr. GRONER:

Q. What consequences are attached to this disallowance of the $548,000—whatever figure that was—by the Air Force on a completely different basis——

A. I might point out, sir, the dates here are determinable. If you wish to cross-question me on specific dates, they are all in these documents here. This company has at the outset, this credit was advanced in the amount of some $6,000,000 and under a V-loan guarantee, the guarantee was 70 per cent. The various amendments up through the eighth had to do with extending the life of the agreement and other things, but progressively, the extent of the guarantee was increased from 70 to 80 and subsequently to 90 per cent. The $548,000 that was referred to earlier here as being disallowance of another sort, the fact that these disallowances existed and had a good deal to do with the fact that the banks desired a higher guarantee at each stage of renewal of this credit.

Q. But you did continue to sign the extension?

A. He asked me what was the effect of the $548,000.

Q. You continued to send the loans, although disallowances were outstanding of over a half-million dollars?

198 A. They were disallowances in process of negotiating with Government auditors. I think it was pointed out here that portions of those were settled, but the banks considered the previous disallowance of which $548,000 was one, as being sufficient to make them disinclined to extend credit under the 70 per cent guarantee as originally existed.

Q. Do you have any way of guessing what amount would be disallowed if this case were to go to hearing?

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Mr. LUND: We object. It is not within this witness' province to guess or to express any opinion.

Judge MATHEWS: The objection is sustained. I think we ought to proceed with the testimony that has some possible value.

Mr. GRONER: I'm sorry; I didn't hear you.

Judge MATHEWS: We ought to confine ourselves to testimony that has some possible value in the case.

Mr. GRONER: That's all I have.

Mr. LUND: That's all, Your Honors. My last witness should be very short. Perhaps we can conclude before noon. I don't know what your wishes are in reference to lunch.

Judge MATHEWS: We will recess until 2:00 o'clock.

(Whereupon an adjournment was taken until the hour of 2:00 o'clock P.M. this date.)

199 Afternoon Session, Friday, July 24, 1953.
10:00 o'clock A.M.

Judge GOODMAN: I would like to call counsels' attention to the case *Ayrshire Corporation* against *United States*. It was decided in 1946 in 331 U.S. 132, which apparently would make decision by a three-judge statutory court void for lack of jurisdiction and even if the two judges agree, they lack the power to decide in a three-judge statutory court, so that it occurs to us if maybe some good reason for expediting the hearing in determination of this matter so that our good friend Judge Friedman does lose his power to participate in this case and if it can be heard and determined before power to adjudicate ends, then we will be all right, but if not, it may well be that this trial would have to proceed over again with a full three-judge panel. I think counsel might look into that case and take it into their consideration. That might be a good reason for expediting this matter as much as possible.

Mr. LUND: Your Honor, in view of your comment, I believe it probably would be correct if we did run into a problem of appointing a third judge, he could proceed on the basis of the available transcript and exhibits without a re-hearing or re-trial.

Judge GOODMAN: You read this case. The Supreme Court goes pretty far and seems to hold that where there is a three-
200 judge statutory court, it is the three-judges that have to hear and determine the case.

Judge MATHEWS: We hope there won't be any occasion in this case. Do you have another witness?

Mr. LUND: One more witness. Mr. Cook, please.

DONALD W. COOK, called as a witness on behalf of petitioner, having been duly sworn, testified as follows:

The CLERK: Will you state your name, address and occupation to the Court?

The WITNESS: Donald W. Cook, Route 6, Box 671, Tucson, Arizona.

DIRECT EXAMINATION.

Mr. LUND:

Q. You are employed by the Grand Central Aircraft Company?

A. Yes, sir.

Q. Your headquarters for that company are where?

A. Tucson, Arizona.

Q. What is your position with that company?

A. Director of Industrial Relations.

Q. In that capacity, have you been working with the company's counsel in connection with this Wage Stabilization Board Enforcement matter?

201 A. Yes.

Q. Can you tell us, from the beginning of the year 1951, up until approximately to date, what percentage of the work of the company at Glendale and Tucson plants have been performed under Government defense contracts?

A. On a combined basis?

Q. Combined.

A. About 7½ per cent has been commercial and 92½ per cent has been Air Force.

Q. And what has the situation been at the Tucson plant alone?

A. The commercial has been less than one half of one per cent.

Q. Now, at the present time at the Tucson plant, is that still true?

A. That's true.

Q. Now, if the Wage Stabilization Board enforcement proceedings were to go to hearing, do you have a judgment of how many witnesses it would call in that proceeding?

A. We have estimated that it would require at least 34.

Q. What were some of the positions of those witnesses in the plant?

A. They were all in a supervisory capacity during 1951.

Q. And at the present time?

A. All but three are in a supervisory capacity ranking from
202 the factory manager to two superintendents, about 12 foremen and assistant foremen and 10 lead men.

Q. You have one assistant superintendent too?

A. Yes.

Q. What effect, if any, would the absence of those employees from your plant to attend this trial have upon your production at that plant?

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A. Well, it would seriously impair our production schedule, inasmuch as you are taking approximately one-fourth of the key personnel out of the production department.

Q. What is the estimated cost to the company of transporting and paying the wages and the per diems and so forth for these witnesses to attend any hearing in the National Enforcement Commission before a Commissioner?

A. I'd estimate it will be in excess of five to six thousand dollars.

Q. Now, in connection with the pending enforcement proceedings, has the company made any extensive investigations, payroll records, and so on, on its own?

A. Quite extensive, yes.

Q. Can you give us an estimate of what the man hours and cost of that work that has been performed by the company to date in connection with this enforcement proceeding?

A. We estimate that we have spent approximately 7,000 man hours.

203 Q. And a cost to the company of approximately how much?

A. Roughly $14,000.

Q. And solely in connection with the Wage Stabilization Board Administrative Enforcement proceedings, the company has paid substantial amounts in attorney fees?

A. Yes.

Q. In excess of what figure?

A. I would say in excess of $10,000.

Q. Now, if this matter should go to a hearing before an Enforcement Commissioner, would an investigation of records and so on have to be made by the company in preparation?

A. Yes.

Q. Do you have an estimate of how much work would be required in such analysis of records and information?

A. Based on our past experience, I'd say between two and three thousand dollars.

Q. How many personnel records would have to be examined; catalogued?

A. In excess of 3500.

Q. Now, in your estimate of the attorneys' fees that have been paid by the company in connection, to date, in connection with the Wage Stabilization Board Enforcement matter, does that estimate include any part of attorneys' fees in connection with this injunction proceeding?

A. Oh, no.

204 Q. And can you tell us what you anticipate your attorneys' fees would be if the National Enforcement Commission matter proceeded to a hearing before the Enforcement Commissioner?

A. Well, it would depend of course on the amount of work that

was involved and how the hearing went. I'd state about five thousand at least, and possibly ten to fifteen thousand.

Q. When was it that the—I'd better lay a preliminary question. The Wage Stabilization Board through the Wage and Hour Division made an inspection of the payroll of Grand Central Aircraft Company, is that correct?

A. That is correct.

Q. When was that inspection made?

A. One made in the first part of August of 1951.

Q. There was a later one made?

A. There was a major one made in the latter part of March, which extended through April, 1952.

Mr. LUND: That is all.

Mr. GRONER: No questions.

Judge MATHEWS: Any further questions?

Mr. LUND: No further questons.

Judge MATHEWS: Any other witnesses?

Mr. LUND: No, Your Honor.

Judge MATHEWS: I think you were reserving this morning the right, possibly you thought you might wish to further cross-
205 examine Mr. Denny, was it?

Mr. GRONER: Yes. As of this morning, we have no wish to cross-examine him.

Your Honor, I don't know what the procedure ought to be at this point. I would like permission of the Court to make an argument, what we conceive to be the legal issues, particularly in view of the status of the case, we want to make sure that the issues get before the Court in the posture in which we see them.

We have no witnesses to call.

Judge MATHEWS: We were inquiring whether you had any evidence to present.

Mr. GRONER: No, except perhaps—there are additional orders, but Your Honors have ruled that you can take judicial notice of them. Beyond that, there is no evidence we have.

Judge MATHEWS: The evidence then is closed?

Mr. LUND: We rest, Your Honor.

(Witness excused.)

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206 PLAINTIFF'S EXHIBIT "B"

COMPUTATION OF VIOLATIVE PAYROLL, TUCSON PRODUCTIVE UNIT

1. Gross Violative Payroll

Payroll March 4, 1951 (weekly)		119,299.14	
Payroll April 1, 1951 (weekly)		139,374.55	
		258,673.69	
Average weekly payroll		129,336.84	
February 26, 1951 to end of year (in weeks)		.44	
Total Violative Payroll in Unit		5,561,484.11	

2. Excess Payments

A. Increases in February 1951:			
461@ 5¢ per hour	$ 23.10		
811@10¢ per hour	81.10		
442@15¢ per hour	66.30		
73@20¢ per hour	14.60		
7@25¢ per hour	1.75		
Total Hourly Increases	$186.85		
Number receiving these increases 1794			
Average hourly increase per employee		.104	
Increase per 40 hour week		4.16	
Feb. 26, 1951 through Dec. 31, 1951 (44 weeks)		44	
Excess to each employee for period		$183.04	
Multiplied by 1794 employees receiving increases in Feb.		1,794	
Total Excess on February Increases		$328,373.76	
B. Increases in March 1951: 139@ 5¢		6.95	
383@10¢		38.30	
659@15¢		98.85	
464@20¢		92.80	
96@25¢		24.00	$437.75
Average increase per hour ($437.75—1946)			.149
Increase for 40 hour week			$ 7.96
March 26 to Dec. —, 1951—40 week—$7.96			$ 318.40
Multiplied by 1946 employees receiving increases in March (1946)			$619,606.40

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C. Increases after 7/27/51 granted within 90 days of a previous increase:

(a) August: 67 increases @ 07¢ per hour average		$ 4.59
40 hour week		183.60
9/1/51 through 12/31/51 (in weeks)		17.4
Excess on August increases		$3,194.64
(b) September: 92 increases @ .074 per hour average		$ 6.80
40 hour week		272.00
10/1/51 through 12/31/51 (in weeks)		13
Excess on September increases		$3,536.00
(c) October: 184 @ .075 per hour average		$ 13.80
40 hour week		552.00
11/1/51 through 12/31/51 (in weeks)		8.7
Excess on October increases		$4,802.40
(d) November: 30@.065		$ 1.95
40 hour week		78.00
12/1/51 through 12/31/51 (in weeks)		4.4
Excess on November increases		$ 344.30

Recapitulation

Excess on February increases	$328,373.76
Excess on March increases	619,606.40
Excess on August increases	3,194.64
Excess on September increases	3,536.00
Excess on October increases	4,802.40
Excess on November increases	344.30
	$959,857.50

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208 PLAINTIFF'S EXHIBIT "F"

GRAND CENTRAL AIRCRAFT CO., SCHEDULE OF AVAILABLE CASH
JUNE 21 TO JULY 19, 1953

Cash on Hand and in Banks 6-21-53		$893,547.70
Payments made week ended 6-28-53 (Accounts Payable)	$605,242.46	
Payments made week ended 6-28-53 (Payroll)	237,086.43	
	$842,328.89	
Less: Cash Receipts	80,401.44	761,927.45
		$131,620.25
Plus: Amount Borrowed from Bank 6-25-53		455,209.37
Cash on Hand and in Banks 6-28-53		$586,829.62
Payments made week ended 7-5-53 (Accounts Payable)	$ 72,214.78	
Payments made week ended 7-5-53 (Payroll)	259,816.24	
	$332,031.02	
Less: Cash Receipts	82,987.32	249,043.70
		$337,785.92
Plus: Amount Borrowed from Bank 7-2-53		249,704.89
Cash on Hand and in Banks 7-5-53		$587,490.81
Payments made week ended 7-12-53 (Accounts Payable)	$179,038.73	
Payments made week ended 7-12-53 (Payroll)	201,661.04	
	$380,699.77	
Less: Cash Receipts	98,640.12	282,059.65
		$305,431.16
Plus: Amount Borrowed from Bank 7-9-53		204,702.86
Cash on Hand and in Banks 7-12-53		$510,134.02
Payments made week ended 7-19-53 (Accounts Payable)	$225,724.49	
Payments made week ended 7-19-53 (Payroll)	213,681.39	
	$439,405.88	
Less: Cash Receipts	183,092.78	256,313.10
		$253,820.92
Plus: Amount Borrowed from Bank 7-17-53		329,396.50
Cash on Hand and in Banks 7-19-53		$583,217.42

Note 1: During above period Bank Borrowings Amounted to $1,239,013.62.
Note 2: During above period amount of money collected by Bank and applied against loan $1,050,000.00.

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